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1 A. Yes.
 2 Q. Do you recognize it?
 3 A. Yes.
 4 Q. Could you tell me what it is? Bates
 5 labeled 5 through 7.
 6 A. It's a fax that was sent to me on the
 7 day after I purchased Biopure stock.
 8 Q. And that fax is from CitiGroup?
 9 A. Yes.
 10 Q. Why did you get this?
 11 A. Because when you get statements it's
 12 after the fact usually, so I wanted confirmation
 13 when they did it and so forth, so that's what
 14 they faxed over to me.
 15 (Whereupon, Exhibit 9 was marked for
 16 identification.)
 17 BY MR. BLANCHARD:
 18 Q. Do you have Exhibit 9 before you?
 19 A. Yes.
 20 Q. Bates labeled 17?
 21 A. Yes.
 22 Q. And what's this?
 23 A. This is the -- on the previous, I
 24 think it was, was it 6 -- on the 30,000 shares

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1 before you?
 2 A. Yes.
 3 Q. Do you recognize it?
 4 A. Yes.
 5 Q. What is it?
 6 A. That's similar to the other page on 9
 7 which had the 30,000 shares, sell price at
 8 \$1.50.
 9 Q. It says February -- it's Bates labeled
 10 18, correct, on the bottom right-hand side?
 11 A. Yes.
 12 Q. And it's a statement for your account,
 13 correct? Or it's a confirmation for your
 14 account?
 15 A. Right.
 16 Q. And it indicates "February 24th we
 17 cancelled your good until cancelled order to
 18 sell 30,000 at a price of," it looks like \$1.50,
 19 1.5, correct?
 20 A. Yes.
 21 Q. Can you explain what that information
 22 reflects?
 23 A. Well, if you --
 24 (Witness reviewing documents.)

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1 to sell at \$1.50 if it goes down to there, this
 2 was just probably an addition to that. It says
 3 "we entered your order to sell 30,000 at a price
 4 of \$1.50. Good till cancelled."
 5 (Whereupon, Exhibit 10 was marked for
 6 identification.)
 7 BY MR. BLANCHARD:
 8 Q. Do you have Exhibit 10 before you?
 9 A. Yes.
 10 Q. Do you recognize it?
 11 A. Yes.
 12 Q. And what is it?
 13 A. That's the sale of similar to what was
 14 on the previous page of the 20,000 shares at
 15 \$1.85.
 16 Q. So this is Bates labeled 20, and this
 17 is a confirmation that you sold the other 20,000
 18 on January 16th, 2004, correct?
 19 A. Correct.
 20 Q. Okay.
 21 (Whereupon, Exhibit 11 was marked for
 22 identification.)
 23 BY MR. BLANCHARD:
 24 Q. Do you have 11 before you, Exhibit 11

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1 A. It reflects on Exhibit 7 showing that
 2 the \$1.50 was cancelled, because on 2-27 it was
 3 sold for \$1.46.
 4 BY MR. BLANCHARD:
 5 Q. I guess my confusion is, and part of
 6 this copy is cut off, but it says something
 7 about, it looks like on February 24th "we
 8 cancelled your good till cancelled order"?
 9 A. Mm-hmm.
 10 Q. And then the shares were sold on
 11 February 27th?
 12 A. Yes.
 13 Q. So did you give another order
 14 following the 24th?
 15 A. No. They were trying to sell them at
 16 that time, going ahead. What it was, they went
 17 ahead at the \$1.50, it went below that, so they
 18 were saying that "okay, we can't get \$1.50, go
 19 ahead," and I said "well, sell them," so they
 20 got it sold on the 27th.
 21 Q. I understand. Thanks.
 22 (Whereupon, Exhibit 12 was marked for
 23 identification.)
 24 BY MR. BLANCHARD:

27 (Pages 102 to 105)

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1 Q. Do you have Exhibit 12 before you?
 2 A. Yes.
 3 Q. And it's a CitiGroup statement for
 4 your account, correct?
 5 A. Yes.
 6 Q. Or a page of it.
 7 It's Bates page 19, correct?
 8 A. Yes.
 9 Q. Also dated -- or dated February 27th,
 10 2004, correct?
 11 A. Yes.
 12 Q. And this is after all of your Biopure
 13 stock held with CitiGroup was sold, is that
 14 correct?
 15 A. Yes.
 16 (Whereupon, Exhibit 13 was marked for
 17 identification.)
 18 BY MR. BLANCHARD:
 19 Q. Do you have Exhibit 13 in front of
 20 you?
 21 A. Yes.
 22 Q. And what's Exhibit 13?
 23 A. That's a statement from Harris Group.
 24 Q. It's related --

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1 A. Or Harris Direct.
 2 Q. It's related to your account, correct?
 3 A. Yes.
 4 Q. Bates labeled 21 through 25, correct?
 5 A. Yes.
 6 Q. The second page of this statement
 7 Bates labeled 22 indicates 25,000 shares of
 8 Biopure common stock, correct?
 9 A. Correct.
 10 Q. And the third page indicates that you
 11 purchased those shares on the 16th, correct?
 12 A. Correct.
 13 Q. Do you recall the total number of
 14 shares you held with Harris in Biopure?
 15 A. It's right there, 25.
 16 Q. Thank you.
 17 A. Thousand, that is.
 18 Q. On the last page of the document, it's
 19 a printout that indicates there's 25,000 shares,
 20 another 45,000, and another 5,000.
 21 A. That was me pulling off on my computer
 22 my personal financial stuff as far as Biopure.
 23 It was just a category of what I pulled up.
 24 Q. So this last page isn't a part of the

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1 Harris?
 2 A. No, has nothing to do with Harris.
 3 That's total thing that I just did, I pull it up
 4 on August 1st on there to see what the price was
 5 on that, and it showed the Harris 25,000, the 45
 6 and the five were Citicorp.
 7 Q. Okay. Got you.
 8 So I guess I'd note that Bates
 9 labelled 25 was incorrectly attached to Exhibit
 10 Number 13. It's not really part of it.
 11 A. Do you want to make it 14 and separate
 12 it?
 13 MR. BLANCHARD: Actually the witness
 14 has a good idea. Let's do that.
 15 (Whereupon, Exhibit 14 was marked for
 16 identification.)
 17 BY MR. BLANCHARD:
 18 Q. And then before you is that Exhibit 14
 19 that you just suggested we take apart. Thank
 20 you.
 21 A. Yes.
 22 Q. Okay. So this is a computer printout
 23 that you did yourself?
 24 A. Yes.

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1 Q. Where did you go on-line to print this
 2 out?
 3 A. I can go into AOL on-line and go ahead
 4 into my financial end and go into personal and
 5 go ahead and put anything in there at that
 6 point.
 7 Q. So you have an account with AOL that
 8 stores this information?
 9 A. No, no, no. It goes ahead, it's not
 10 an account with it, it's a portion that you can
 11 go into and just keep it going. You can put
 12 anything in there that you want to go ahead and
 13 keep track of, stock or anything else and go
 14 ahead. So I had -- I kept track of my Biopure
 15 in that.
 16 Q. Okay. And so this is part of your
 17 personal records?
 18 A. Right. It can be stuff that you don't
 19 purchase, you can go ahead and have stuff that
 20 you have purchased, there's no requirement, you
 21 put a price in there, call, sell, hypothetical.
 22 Q. Okay.
 23 (Whereupon, Exhibit 15 was marked for
 24 identification.)

28 (Pages 106 to 109)

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1 BY MR. BLANCHARD:
 2 Q. Do you have Exhibit 15 before you?
 3 A. Yes.
 4 Q. And what is Exhibit 15?
 5 A. That's a statement from Harris Group.
 6 Q. And it's Bates labeled 31 and 32,
 7 correct?
 8 A. Correct.
 9 Q. And I'm sorry, I'm looking for the
 10 date on it, but I'm not seeing the date that
 11 this statement was issued.
 12 A. 5-16, it states the settlement date of
 13 5-21, the trade date of 5-16, if you look in the
 14 corner here.
 15 Q. Right, right.
 16 A. Now, that's the -- this is just an
 17 update from the other Harris Group thing that
 18 you saw previously on Exhibit 13 just showing
 19 you the Biopure price and then the principal.
 20 Q. I'm not sure what date the account --
 21 or this statement was issued. I don't think
 22 it's reflected on this document, but that's
 23 fine.
 24 A. I don't see a date other than the

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1 settlement date, which might be the date of the
 2 document.
 3 Q. Okay. We could take a break for a
 4 minute and I'll try --
 5 A. It concurs with your 13, if you take a
 6 look at that, I believe. If you go back there
 7 where it has the -- I think it's all 5-21, it
 8 just says the process date, doesn't have the
 9 date. It's probably just the May confirmation
 10 on it, the May statement.
 11 Q. Okay.
 12 A. It just backs up the Exhibit 13.
 13 Q. I just want to ask, we'll take a
 14 break, but during the break could you just
 15 review Exhibits 2 through 15, and I simply want
 16 to be sure that these are all statements -- they
 17 are your account statements, so just
 18 authenticate that they were your account
 19 statements?
 20 MR. LONGMAN: You want him to go
 21 through each one of those?
 22 A. My account statements?
 23 BY MR. BLANCHARD:
 24 Q. All I want to know, I just want to

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1 know that these are, in fact, documents from
 2 your files on --
 3 A. Yes, they are.
 4 Q. You can tell me that right now?
 5 A. Yes.
 6 MR. TUCCILLO: They're not all
 7 accounts.
 8 MR. LONGMAN: Exhibit 14, AOL.
 9 MR. BLANCHARD: Good point.
 10 BY MR. BLANCHARD:
 11 Q. But they are all your files?
 12 A. Yes.
 13 MR. BLANCHARD: Let's take a break for
 14 a moment.
 15 MR. LONGMAN: There's another one in
 16 here, Exhibit 8 is not an account statement per
 17 se.
 18 MR. BLANCHARD: Right.
 19 A. It's a fax, but it's related to my
 20 account only. And as far as what I pulled up on
 21 the makeshift thing that I do, that's mainly on
 22 my account, that's nothing else.
 23 (Whereupon, a recess was taken from
 24 3:49 p.m. to 3:56 p.m.)

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1 (Whereupon, Exhibit 16 was marked for
 2 identification.)
 3 BY MR. BLANCHARD:
 4 Q. Do you have Exhibit 16 before you?
 5 A. Yes.
 6 Q. Can you identify it?
 7 A. Yes.
 8 Q. What is it, please?
 9 A. It's papers that I pulled off of
 10 Internet, I guess it was MSN Money, that they
 11 would go ahead and show on the page, AOL has it,
 12 so it pulls up anything financial, it had it on
 13 Biopure, so I'd ended up pulling it off,
 14 printing it out, and that was on May 11th, 2003.
 15 Q. Okay.
 16 A. And it was in regards to March 25th,
 17 2003, Newswire.
 18 Q. Was this part of your own research
 19 before you purchased Biopure?
 20 A. Yes.
 21 Q. By the way, how did you first hear
 22 about Biopure?
 23 A. I went in, as I said before
 24 previously, I went into the Internet when I knew

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1 I was going to go ahead and sell some stock
2 options and so forth, I went ahead and ended up
3 starting to look at some different things as far
4 as what I'd do with it. And so then I ended up
5 going ahead and going into stock, and I ended up
6 going up -- there was a thing on AOL on eight
7 top stocks to go ahead and look at that would be
8 a good purchase. Biopure was one of them.

9 It had a caption in there and I went
10 ahead into it and looked it up, and saw it was a
11 company in Cambridge, and close by, and did the
12 research on it.

13 Q. So did you read this document at the
14 time?

15 A. Yes.

16 Q. Was there anything about -- was there
17 any information contained therein that motivated
18 you to purchase Biopure securities?

19 MR. LONGMAN: In this document right
20 here?

21 MR. BLANCHARD: Yes.

22 A. In this document. Well, first of all,
23 that they raised \$13,000,000 through sale of
24 common stock, so there might have been quite a

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1 few people that were researching and interested
2 in the stock at the time as far as where it
3 would go. So it was one of the things. This
4 was not the driving force of it, but it was one
5 that I had looked up on.

6 BY MR. BLANCHARD:

7 Q. Was there any information about the
8 company other than their issuing 13,000,000 in
9 stock that motivated you to purchase Biopure
10 securities?

11 MR. LONGMAN: I'm going to object to
12 the form of the question. "Motivated you to
13 purchase," it's vague.

14 BY MR. BLANCHARD:

15 Q. Influenced your decision.

16 A. I would say it was a piece of what was
17 there as far as going ahead, and had approval in
18 South Africa, I mean whatever, you know, it's to
19 the point at that time I read the article and
20 looked into it more.

21 As far as the Defense Department, I
22 mean that's what was a big influence, as far as
23 them being interested in it.

24 Q. And are you referring to something in

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1 this document when you talk about the Defense
2 Department? You can just point the page out to
3 me if you'd like.

4 A. You can go to page two of three, this
5 content of "this press release does not
6 necessarily reflect the position or policy of
7 the government or the Department of Defense, and
8 no official endorsement should be inferred.
9 Statements in this press release are not
10 strictly historical, at that point, but actual
11 results may differ from those projected in the
12 forwarding looking statements."

13 The thing is other than that, then
14 everything else that showed as far as the
15 Hemopure in South Africa, they had -- I checked
16 into that as far as going ahead, and it was
17 approved in South Africa, treatment and
18 everything else for adults, searching for
19 patients that are anemic or for the purpose of
20 eliminating reducing allogenic, etcetera. So
21 that's what I checked into and looked into it.
22 It was one of the many --

23 MR. TUCCILLO: Perhaps he ought to
24 read the whole thing. It's several pages long,

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1 and he looked at it obviously three years ago,
2 so I don't know --

3 MR. BLANCHARD: If the witness feels
4 like he needs to read the thing, then let me
5 know what motivated or didn't motivate his
6 decision.

7 A. This didn't motivate me. This is a
8 portion of, piecemeal of what I went ahead and
9 researched on it to go ahead that way.

10 If you're trying to narrow it down to
11 this document or this piece, whatever you want
12 to call it, this was minute compared to what I
13 looked at or researched to make a decision.

14 (Whereupon, Exhibit 17 was marked for
15 identification.)

16 MR. LONGMAN: If you're going to ask
17 some questions on the documents, just give him
18 time to read the whole document.

19 MR. BLANCHARD: Oh, sure.

20 MR. LONGMAN: This is several
21 articles, by the way.

22 MR. BLANCHARD: They're attached
23 together.

24 MR. LONGMAN: Yes.

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1 MR. BLANCHARD: That's fine.
 2 (Whereupon, Exhibit 18 through 23 were
 3 marked for identification.)
 4 (Off the record discussion.)
 5 BY MR. BLANCHARD:
 6 Q. You have a number of exhibits before
 7 you numbered 18 through 23 --
 8 A. Actually 16 because you gave me this
 9 one earlier on that.
 10 Q. You're right.
 11 A. I mean you have -- I was reading
 12 content --
 13 MR. LONGMAN: Wait, do me a favor,
 14 don't say anything.
 15 BY MR. BLANCHARD:
 16 Q. Exclusive of 16, I have a number of
 17 exhibits before you, Exhibits 17 through 23,
 18 correct?
 19 A. Correct.
 20 Q. And please take a moment to review
 21 them, and my question is; are any of those
 22 exhibits, do any of those exhibits predate your
 23 purchase of Biopure securities?
 24 MR. LONGMAN: Well, I would just like

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1 to make an objection. If the date on the
 2 article is before his purchase, then they
 3 predated, if they don't they don't.
 4 BY MR. BLANCHARD:
 5 Q. Let's go through one by one.
 6 MR. LONGMAN: I don't know what's even
 7 in here.
 8 BY MR. BLANCHARD:
 9 Q. Exhibit 17 --
 10 A. No.
 11 Q. Exhibit 17 is what? Could you
 12 identify it for me, please?
 13 A. October 30th, 2003 ThinkEquity.
 14 Q. Correct.
 15 MR. TUCCILLO: There's actually a
 16 couple.
 17 A. And that's after --
 18 MR. LONGMAN: There's another article,
 19 as a matter of fact two, at least two more.
 20 BY MR. BLANCHARD:
 21 Q. There's a couple appended to it,
 22 correct? There's an AOL News that is the fourth
 23 page of that exhibit, correct?
 24 A. And if that's October 30th, then

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1 that's -- and October 31st is an OTC.
 2 Q. Just so we're clear, and that one we
 3 just referred to is Bates labeled 64?
 4 A. Yes.
 5 Q. And then Bates label 65 is Overlooked
 6 Stocks, correct?
 7 A. Okay. No, it's OTC First Alert,
 8 Overlooked Stocks, yes.
 9 Q. Bates labeled 65, correct?
 10 A. Yes.
 11 Q. And that is dated 10-31-03, correct?
 12 A. Yes.
 13 Q. And then there's a fax cover sheet
 14 that probably shouldn't be appended there
 15 following it.
 16 Exhibit 18 is a report from
 17 EmedSecurities, correct?
 18 A. Yes.
 19 Q. Bates labeled 53 through 60, correct?
 20 A. Yes.
 21 Q. All right. Do you see a date on this
 22 particular exhibit for when it was issued?
 23 A. No. It was closed -- stating that
 24 financial data is closed as of January 7th,

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1 2004.
 2 Q. Do you recall reading this document?
 3 A. I don't really --
 4 MR. LONGMAN: Take a moment to look it
 5 over.
 6 (Witness reviewing document.)
 7 A. I believe I did.
 8 BY MR. BLANCHARD:
 9 Q. Okay. You didn't read this before you
 10 purchased Biopure securities, did you?
 11 MR. LONGMAN: You said you did what?
 12 BY MR. BLANCHARD:
 13 Q. Read it.
 14 A. Read it.
 15 As far as --
 16 Q. I'm not trying to trip you up.
 17 A. No, I don't --
 18 Q. If you look to the third page, there's
 19 a discussion of information about things
 20 happening in 2004, so it must have come out --
 21 I'm just trying to establish that the date was
 22 sometime in 2004?
 23 A. Right.
 24 Q. Okay. And then Exhibit Number 19, can

31 (Pages 118 to 121)

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1 you identify Exhibit Number 19?
 2 A. It's the "Amex To Trade Options on
 3 Eight Securities."
 4 Q. Did you read this document?
 5 A. Yes, I did.
 6 Q. Approximately when did you read it?
 7 A. That was in -- it was dated June 10th
 8 and June 11th, so it was somewhere right around
 9 there, either -- right in that period.
 10 Q. Okay.
 11 A. I pulled it off.
 12 Q. I think earlier in your testimony you
 13 mentioned an article about eight stocks to buy.
 14 Is this the article you were talking about
 15 before?
 16 A. Yes.
 17 Q. Okay. This article post-dates or
 18 comes after your purchase of Biopure securities,
 19 correct?
 20 A. Yes.
 21 Q. Okay. So you couldn't have read this
 22 until after you had already purchased Biopure
 23 securities, correct?
 24 A. Correct. This is one of them, one

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1 after in the sense that's when I went ahead and
 2 I purchased them. As far as going ahead for
 3 that point, I went ahead and it went up, as far
 4 as the stock was going up, and that's where in a
 5 sense I had bought it for \$5.70, and it ended up
 6 this came out as far as go ahead and saying this
 7 is one of the top stocks to look at and
 8 purchase. I had seen other information going
 9 ahead that way also off AOL, but this is from
 10 Amex, the charge card, Amex.
 11 As far as what -- I ended up taking
 12 information on this, too, to go ahead and
 13 showing that it was a solid operation as far as
 14 that stock goes.
 15 Q. Okay.
 16 A. That's when it went up and kept on
 17 going up that June, July and August.
 18 MR. LONGMAN: Can I note there's also
 19 appended to this document two other pages which
 20 are not necessarily related to the first part?
 21 They have --
 22 MR. BLANCHARD: Maybe the witness
 23 could tell.
 24 A. I don't have that one, no.

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1 MR. BLANCHARD: I think they're
 2 appended to yours only, I apologize.
 3 MR. LONGMAN: This is not part of the
 4 exhibit?
 5 MR. BLANCHARD: No. I think those are
 6 just repeat copies that got into yours, they're
 7 just copies of the third page.
 8 A. That would show the stock went up to
 9 6.80.
 10 MR. LONGMAN: There's no question.
 11 That's not part of Exhibit 19.
 12 MR. BLANCHARD: No.
 13 Can we go off the record for a second?
 14 (Off the record discussion.)
 15 BY MR. BLANCHARD:
 16 Q. Exhibit 19 is Bates page 45 through
 17 47, correct?
 18 A. Correct.
 19 Q. Okay. At the bottom of each page it
 20 says "Tuesday, July 8th, 2003, America On-Line
 21 Re 1919," correct?
 22 A. On the bottom of the page?
 23 Q. Underneath the little line.
 24 A. Yes. Okay. Yes.

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1 Q. And it says that on all three pages,
 2 correct?
 3 A. Correct.
 4 Q. And it lists a date July 8th, 2003,
 5 correct?
 6 A. Correct.
 7 Q. Would that be the date that you pulled
 8 this off-line?
 9 A. Yes.
 10 Q. Okay. Exhibit 20, do you have Exhibit
 11 20 before you?
 12 A. Yes.
 13 Q. Do you recognize it?
 14 A. Yes.
 15 Q. Okay. It's looks like some news about
 16 Biopure, correct?
 17 A. Mm-hmm.
 18 Q. The indication at the bottom of the
 19 page again is July 8th, 2003, America On-Line,
 20 correct?
 21 A. Yes.
 22 Q. So you looked at this in July of 2003?
 23 A. Correct.
 24 Q. Okay. And then Exhibit 21, Bates

32 (Pages 122 to 125)

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1 labeled 39 through 40, is a CBS MarketWatch
 2 article, correct?
 3 A. Yes.
 4 Q. And it appears it was printed on
 5 August 1st, 2003 from the bottom, very bottom
 6 line, correct?
 7 A. Yes.
 8 Q. Okay. Exhibit 22 is Bates labeled 36
 9 through 37, correct?
 10 A. Yes.
 11 Q. And it appears from the bottom it was
 12 printed August 14th, 2003, correct?
 13 A. Correct.
 14 Q. And would that be the date that you
 15 had read it, August 14th, 2003?
 16 A. That would probably be the date that I
 17 read it.
 18 Q. This is a document that's produced
 19 from your files, correct?
 20 A. Yes.
 21 Q. Exhibit 23 is Bates labeled 42 to 43,
 22 correct?
 23 A. Yes.
 24 Q. And it's a CBS MarketWatch report,

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1 correct?
 2 A. Correct.
 3 Q. Again it appears from the bottom that
 4 it was printed out on August 1st, '03, correct?
 5 A. Correct.
 6 Q. This was produced from your files,
 7 correct?
 8 A. I believe so.
 9 Q. Of Exhibits 17 through 23, none of
 10 them predate your purchases in Biopure
 11 securities, right?
 12 A. Right.
 13 Q. Okay. Did you have any documents in
 14 your files other than Exhibit 16? Maybe you
 15 should look at Exhibit 16 again, I'm sorry.
 16 A. Okay. I did, but --
 17 Q. I think let me just restate my
 18 question.
 19 You have Exhibit 16 before you?
 20 A. Mm-hmm.
 21 Q. Did you have any other documents in
 22 your files regarding Biopure other than Exhibit
 23 16 which predate your purchase in Biopure
 24 securities?

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1 A. I did have some, yes.
 2 Q. Okay. Do you have them any longer?
 3 A. No, I don't.
 4 Q. And you threw those out at some point?
 5 A. Yes.
 6 Q. And when did you throw those out?
 7 MR. LONGMAN: Asked and answered.
 8 A. I'm not sure. They were thrown out by
 9 accident with a bunch of other tax information
 10 that I had for probably 2003 when I had done
 11 taxes, and it ended up going ahead and getting
 12 thrown out in the rubbish.
 13 BY MR. BLANCHARD:
 14 Q. Okay.
 15 A. Because I had filed for -- where I did
 16 the stock options and everything else, and I
 17 ended up needing all the information for tax,
 18 and that's what I had with it, and they got
 19 tossed.
 20 Q. Okay. Is it fair to say that Exhibit
 21 16 is the only document that you had in your
 22 files or you have in your files --
 23 A. Remaining.
 24 Q. -- remaining which predated your

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1 purchase of Biopure securities which relates to
 2 Biopure?
 3 A. At this point in time, yes.
 4 MR. BLANCHARD: Can we go off the
 5 record for a second?
 6 (Off the record discussion.)
 7 BY MR. BLANCHARD:
 8 Q. I apologize the way I asked the
 9 question, maybe we got to a quick response.
 10 You did have account statements, of
 11 course, regarding Biopure?
 12 A. Yes.
 13 Q. But nothing predating your purchase of
 14 Biopure other than this Exhibit 16 is in your
 15 files?
 16 A. Correct.
 17 MR. TUCCILLO: And the account
 18 statements.
 19 MR. LONGMAN: That relate to Biopure.
 20 MR. BLANCHARD: He wouldn't have an
 21 account statement --
 22 MR. LONGMAN: Before he bought the
 23 stock, right.
 24 MR. TUCCILLO: He has some account

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1 statements which predate his subsequent
2 purchases. He purchased over time.

3 MR. BLANCHARD: But he has no account
4 statement relating to Biopure before he bought
5 Biopure, right? It would be impossible.

6 MR. TUCCILLO: Yes, but some of his
7 account statements predate some of his
8 purchases.

9 MR. BLANCHARD: Let's go off the
10 record a second.

11 (Off the record discussion.)

12 MR. LONGMAN: Instead of trying to get
13 him to tie down, I mean the documents speak for
14 themselves, and he's told you that this is all
15 he has, and all he had except for what he may
16 have thrown out at some point.

17 MR. BLANCHARD: I'm just clarifying
18 that.

19 MR. LONGMAN: So now you're asking for
20 his recollection of what he has, whereas the
21 best evidence of that is really what's here.

22 MR. BLANCHARD: Well taken. Thank
23 you.

24 BY MR. BLANCHARD:

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1 Q. When you ultimately sold your Biopure
2 stock in your Citi account, you sold 20,000 on
3 January 16th, we've established that, correct,
4 and then there was another order to sell when it
5 hits \$1.50 for another 30,000 shares, correct?

6 A. Correct.

7 Q. Why did you split? Why didn't you
8 sell it all in one batch?

9 A. Because at that point in time I was
10 hoping that something would come about and
11 possibly the stock would stay steady and I could
12 end up getting my money back, whatever. But I
13 knew that if it was continuing to go down, then
14 that wasn't the case. So I had to go ahead and
15 bite the bullet and take my losses.

16 Q. When did you sell the stock in your
17 Harris account?

18 A. That was probably about a month later.

19 Q. Your last shares in your Citi account
20 were sold on February 27th, so your Harris
21 Biopure stock was sold end of March?

22 A. Probably, somewhere there.

23 Q. Do you have any documents reflecting
24 that?

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1 A. No. I was trying to find them, and I
2 haven't been able to locate them.

3 Q. Would you be able to obtain them from
4 Harris?

5 A. No, because what -- Harris Group does
6 not work with Washington Mutual anymore, they
7 work with somebody else on that, I think it's
8 Fidelity or whatever, and they don't have the
9 records on it.

10 Q. Why did you wait another month to sell
11 your Biopure stock that was held with Harris?

12 A. Because I guess it was the last
13 25,000, it wasn't completely directly out of
14 pocket, and being optimistic, hoping that it
15 might turn around, which we saw there wasn't.

16 Q. And at that point you had already
17 decided to sue Biopure, correct?

18 A. Yes.

19 MR. LONGMAN: At what point are we
20 talking about, in March, 2003?

21 MR. BLANCHARD: Correct.

22 MR. TUCCILLO: '04.

23 MR. LONGMAN: March, 2004?

24 MR. BLANCHARD: Yes.

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1 MR. LONGMAN: Okay.

2 BY MR. BLANCHARD:

3 Q. Are you aware that there's a complaint
4 filed in this action against Biopure?

5 MR. LONGMAN: Objection.

6 BY MR. BLANCHARD:

7 Q. When I say "complaint," I'm referring
8 to a legal document that is the lawsuit against
9 Biopure. I just want to get a term out there.

10 Are you aware of a complaint filed
11 against Biopure in this action?

12 A. When you say by "complaint against
13 Biopure in this action," you mean the class
14 action?

15 Q. Yes, yes.

16 A. I presume yes, in that sense.

17 Q. Do you recall ever reading a
18 complaint?

19 A. I've read most of the information that
20 I've received from my attorneys and going ahead
21 that way, yes.

22 Q. Okay.

23 MR. BLANCHARD: This will be marked as
24 Exhibit 24.

34 (Pages 130 to 133)

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1 (Whereupon, Exhibit 24 was marked for
 2 identification.)
 3 MR. LONGMAN: Consolidated amended
 4 complaint.
 5 BY MR. BLANCHARD:
 6 Q. Do you have Exhibit 24 in front of
 7 you?
 8 A. Yes.
 9 Q. Have you --
 10 MR. LONGMAN: Hold on one second.
 11 There's stuff on the end of this thing.
 12 MR. BLANCHARD: That's the exhibit.
 13 MR. LONGMAN: These are all the
 14 exhibits. Okay.
 15 BY MR. BLANCHARD:
 16 Q. Do you have Exhibit 24 before you?
 17 A. Yes.
 18 Q. And have you ever seen it before?
 19 A. Yes.
 20 Q. What is it?
 21 A. It's the amended, consolidated amended
 22 complaint against Biopure Securities Litigation.
 23 Q. Have you ever read it?
 24 A. Yes.

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1 Q. When did you read it?
 2 A. I'm not exactly sure. I got a copy of
 3 it prior to being filed, and I'm not sure what
 4 the date was at that time, sometime in -- I'm
 5 not positive as to the date I read it.
 6 Q. Did you participate in drafting this
 7 document?
 8 MR. LONGMAN: Objection.
 9 A. I didn't draft -- I'm not a legal
 10 entity, so I didn't draft the document.
 11 BY MR. BLANCHARD:
 12 Q. What are the nature of the claims
 13 brought against Biopure in this action?
 14 A. More so they violated the securities,
 15 is more so there's certain parameters that a
 16 company has to go by laid down by the Securities
 17 Administration, and at that point they had not,
 18 so they went ahead and ended up -- that was the
 19 more so the filing of the class actions, it's
 20 information had not been divulged.
 21 Q. Why did Biopure in your view violate
 22 the securities laws?
 23 A. I don't --
 24 MR. LONGMAN: I'm going to object. I

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1 think you mean to say how did they, why is --
 2 MR. BLANCHARD: You're absolutely
 3 correct.
 4 A. If I could tell that, I would have
 5 known a lot more.
 6 MR. LONGMAN: And also I think that
 7 how they violated it calls for a legal
 8 conclusion.
 9 But to the extent it doesn't, you can
 10 answer that question.
 11 A. Okay.
 12 MR. LONGMAN: But that's a good
 13 question.
 14 A. They had information that they did not
 15 divulge, at the point in time people were
 16 purchasing the stock or having the ability to
 17 sell the stock ahead of time in that sense from
 18 where they were put on hold by the, I believe,
 19 the FDA, and at that point in time they did not
 20 divulge any information on that. And that was
 21 during the period that the stock was rising in
 22 price from anywhere from almost \$5.70 up to
 23 eight and a quarter. And if they had divulged
 24 that information, it would have been a

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1 completely different scene at that time.
 2 BY MR. BLANCHARD:
 3 Q. Let's break that down.
 4 What was the information that they did
 5 not divulge in your view?
 6 MR. LONGMAN: Asked and answered.
 7 THE WITNESS: Pardon?
 8 MR. LONGMAN: I thought you answered
 9 that question. But you can answer it again.
 10 A. I thought I did, too.
 11 But as far as going ahead, they were
 12 put on hold as far as going ahead with the FDA.
 13 They had over 200 questions in their application
 14 that they had to answer, they did not go ahead,
 15 and they made it seem that everything was fine
 16 and it was following through, and it wasn't.
 17 BY MR. BLANCHARD:
 18 Q. What does it mean to be put on hold by
 19 the FDA?
 20 A. They would not get approved at all
 21 until they ended up going ahead and answering,
 22 following through on all the 220 questions, I
 23 think it was at that point.
 24 Q. At what point were they put on hold by

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1 the FDA in your view?
 2 A. My view, I think it was the end of
 3 March, beginning of April of 2003, and they were
 4 coming up in June.
 5 Q. And were all those 200 some odd
 6 questions you mentioned pending at that time?
 7 MR. LONGMAN: Objection.
 8 A. I believe they filed their report and
 9 came back with those questions, which should
 10 have been answered to begin with.
 11 BY MR. BLANCHARD:
 12 Q. Who is "they" in your answer?
 13 A. Biopure.
 14 Q. Biopure filed their report, you said?
 15 A. I believe so.
 16 Q. And what was -- filed it with who?
 17 A. FDA.
 18 Q. And what was the nature of that
 19 report?
 20 A. The nature of the report is to go
 21 ahead and get it approved by the FDA on their
 22 product.
 23 Q. Let's just back up and get some
 24 background about Biopure.

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1 We know that Biopure produces
 2 Hemopure, and that's something like a blood
 3 substitute, right?
 4 A. Mm-hmm.
 5 Q. What is it that Biopure has to do to
 6 get FDA approval of Hemopure?
 7 MR. LONGMAN: I'm going to object.
 8 This is way beyond, you're asking
 9 for --
 10 A. I'm not an expert.
 11 MR. LONGMAN: That is really a
 12 question for an expert. I'll let the witness
 13 answer to the extent he has knowledge about it.
 14 Obviously that's beyond the realm of a layman.
 15 But if you can answer that to the
 16 extent you can, go ahead.
 17 A. I'd really rather not, because I'm not
 18 an authority on it.
 19 BY MR. BLANCHARD:
 20 Q. You know that Biopure has to receive
 21 FDA approval, correct?
 22 A. Yes.
 23 Q. And they have to receive FDA approval
 24 for Hemopure, correct?

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1 A. Yes.
 2 Q. Okay. And Biopure submitted some form
 3 of application with the FDA to receive approval
 4 for Hemopure?
 5 A. To the best of my knowledge.
 6 Q. Do you know what the term "indication"
 7 means regarding FDA approval process?
 8 MR. LONGMAN: Objection.
 9 A. What does it mean?
 10 BY MR. BLANCHARD:
 11 Q. Yes. Do you know?
 12 A. I'm asking you what does it mean.
 13 Q. No. If your answer is you don't know,
 14 then that's fine.
 15 A. Okay.
 16 Q. Is your answer that you don't know?
 17 A. I'm not sure what you mean by that,
 18 "indication."
 19 Q. Do you know what an IND is?
 20 MR. LONGMAN: Objection.
 21 A. I don't know.
 22 BY MR. BLANCHARD:
 23 Q. Do you know what a BLA is?
 24 MR. LONGMAN: Objection.

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1 A. Don't know.
 2 BY MR. BLANCHARD:
 3 Q. Do you know what a biologics license
 4 application is?
 5 MR. LONGMAN: Objection.
 6 A. I don't know.
 7 BY MR. BLANCHARD:
 8 Q. Are you aware that Biopure had
 9 submitted by 2003 a biologics license
 10 application for approval of Hemopure in an
 11 orthopedic surgery setting?
 12 MR. LONGMAN: Was he aware now sitting
 13 here today, or is he aware in 2003?
 14 MR. BLANCHARD: Was he aware then.
 15 A. That they applied for an application
 16 or license?
 17 BY MR. BLANCHARD:
 18 Q. That they had submitted a biologics
 19 license application.
 20 MR. LONGMAN: He just said he doesn't
 21 know what the term means.
 22 A. I don't know.
 23 MR. LONGMAN: Maybe you could explain
 24 what you mean by that term if you're going to

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1 ask that question.
 2 MR. BLANCHARD: That's fair enough.
 3 BY MR. BLANCHARD:
 4 Q. Are you aware that Biopure was seeking
 5 FDA approval in orthopedic surgery -- I'm sorry.
 6 Were you aware at the time you
 7 purchased Biopure securities that Biopure was
 8 seeking FDA approval to use Hemopure in
 9 orthopedic surgery?
 10 A. Yes.
 11 Q. Were you aware that they were seeking
 12 FDA approval in any other setting?
 13 A. I'm not sure.
 14 Q. Are you aware today whether Biopure is
 15 seeking FDA approval in any other setting?
 16 MR. LONGMAN: Objection.
 17 A. At this point in time, I'm not sure.
 18 I haven't looked into it since I sold the stock.
 19 BY MR. BLANCHARD:
 20 Q. Are you aware of whether Biopure ever,
 21 since the time they were seeking approval for
 22 orthopedic surgery, are you aware of whether
 23 they ever sought FDA approval to use Hemopure in
 24 any setting other than orthopedic surgery?

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1 A. I was aware of the fact in a
 2 conference call that I went on that there was a
 3 case where a daughter that was thirteen years
 4 old, and the father tried everything, and ended
 5 up using Biopure to go ahead and cure her
 6 cancer, and went through thirteen transfusions
 7 at that point in time to go ahead, and her color
 8 changed drastically, but it was saving her life,
 9 that's it.
 10 So I mean there were other things,
 11 that I forgot more than what I could remember at
 12 this point in time, but I knew there were other
 13 alternatives to that other than just orthopedic.
 14 Q. You mentioned before something about a
 15 hold.
 16 A. Mm-hmm.
 17 Q. What is a hold, or the hold that you
 18 were referring to earlier in your testimony?
 19 A. Going ahead and getting approval from
 20 the FDA.
 21 Q. What was put on hold exactly, do you
 22 know?
 23 A. Their application.
 24 Q. Their entire application?

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1 A. Their -- from what I gathered it was
 2 their entire application on hold until they go
 3 ahead and get the approvals. As far as how they
 4 researched and how they had their issues, I
 5 don't know specifically if there was an approval
 6 on one sector of it and another and a hold on a
 7 portion. I was assuming that it was the whole
 8 application that was put on hold until they go
 9 ahead.
 10 I don't know the process, if they
 11 approve a portion of the application and then
 12 you have to follow through on other sectors of
 13 it. I'm not up on the FDA approval process.
 14 Q. Can you tell me who Thomas Moore is?
 15 A. He's one of the entities that we filed
 16 against, and he's one of the controlling
 17 entities in the company.
 18 Q. What do you mean by "entity"?
 19 A. Okay. He's one of the -- when I look
 20 at a company I look at the people who have
 21 control, and he's one of them.
 22 Q. Okay. I got you.
 23 What about Abdu Alayash?
 24 MR. LONGMAN: Who?

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1 BY MR. BLANCHARD:
 2 Q. Abdu Alayash?
 3 A. That doesn't sound familiar.
 4 Q. Are you familiar with Charles Sanders?
 5 A. I believe he's on there also.
 6 Q. Who is he?
 7 A. He's -- I'd have to look up the names
 8 to see on that. Do you have, that doesn't sound
 9 -- Sanders?
 10 Q. Yes, Sanders.
 11 A. I'd have to look at the information.
 12 Q. Are you familiar with J. Richard
 13 Crout?
 14 A. Yes.
 15 Q. And who is J. Richard Crout?
 16 A. He's one of the controlling people of
 17 the company.
 18 Q. Is he a Defendant in this action?
 19 A. No.
 20 Q. Is Charles Sanders a Defendant in the
 21 action?
 22 A. I believe so, yes.
 23 Q. Is Thomas Moore a Defendant in the
 24 action?

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1 A. Yes.
 2 Q. Is John Esposito a Defendant in the
 3 action?
 4 MR. LONGMAN: Objection.
 5 A. Esposito, no, I don't believe so.
 6 BY MR. BLANCHARD:
 7 Q. Is Carl Rausch a Defendant in the
 8 action?
 9 A. Yes.
 10 Q. Ronald Richards?
 11 A. Yes.
 12 Q. What about Howard Richman?
 13 A. Yes. Sanders, I don't believe, I
 14 don't believe he is. That doesn't -- that's --
 15 I'm vague there.
 16 MR. LONGMAN: You already answered
 17 that.
 18 BY MR. BLANCHARD:
 19 Q. Do you recall whether or not Charles
 20 Sanders is a Defendant in the action? It sounds
 21 like you're going back and forth there. If you
 22 don't recall, that's fine.
 23 A. I don't recall.
 24 Q. Okay. Do you know what role Thomas

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1 Moore played at the company at the time, during
 2 2003?
 3 A. I believe he was a director.
 4 Q. Did he have any other role at the
 5 company?
 6 A. I don't really -- I'm trying to -- I'm
 7 confusing. He might have, I'm not -- I can't
 8 think right now.
 9 Q. How about Howard Richman, do you
 10 recall what his role was at the company during
 11 the time?
 12 A. I don't recall.
 13 Q. Carl Rausch, do you recall his role at
 14 the time during 2003?
 15 A. I'd rather say the same thing there,
 16 because going ahead I'd have to see the list of
 17 them.
 18 Q. So you don't --
 19 A. I didn't memorize them or look at them
 20 in that sense. I just saw that they were
 21 principals.
 22 Q. Do you know who the chief executive
 23 officer of the company was during 2003?
 24 A. I don't remember.

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1 Q. What about the director of regulatory
 2 affairs?
 3 A. I don't remember.
 4 (Whereupon, Exhibit 25 was marked for
 5 identification.)
 6 BY MR. BLANCHARD:
 7 Q. Do you have Exhibit 25 in front of
 8 you?
 9 A. Yes.
 10 Q. Can you identify it?
 11 A. It's the second consolidated amended
 12 complaint.
 13 Q. Have you ever read this document?
 14 A. Yes.
 15 Q. Do you recall approximately when you
 16 read it?
 17 A. No, I don't.
 18 Q. Do you know how the second
 19 consolidated amended complaint differs from the
 20 consolidated amended complaint? Do you know how
 21 Exhibit 24 differs from Exhibit 25?
 22 A. I believe it has some additional
 23 information that was added that came up that
 24 they didn't know about in the first one.

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1 Q. Who is "they"?
 2 A. Okay, my attorneys.
 3 Q. Okay.
 4 A. And I guess the public.
 5 Q. Do you know the nature of that
 6 additional information?
 7 A. I think it came out of the securities
 8 hearing or the FDA as far as what came out of
 9 the -- at that point in time, as far as the
 10 information that -- the filings in the
 11 securities.
 12 Q. It came out of filings -- I'm sorry.
 13 A. When the Securities & Exchange
 14 Commission went ahead --
 15 (Whereupon, the reporter read back the
 16 above questions and answers.)
 17 BY MR. BLANCHARD:
 18 Q. Where did the additional information
 19 come from again?
 20 A. Probably from the Judicial District
 21 Court as far as that. So I mean as far as the
 22 Securities & Exchange filings.
 23 Q. Do you know which court this action is
 24 pending in?

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1 A. Federal.
 2 Q. Do you know what jurisdiction or what
 3 state?
 4 A. It would be Massachusetts.
 5 Q. Did you participate in any of the new
 6 information -- you know, forgive me, it's
 7 getting late.
 8 Did you participate in selecting what
 9 new information was put into the second amended
 10 complaint, Exhibit 25?
 11 A. I was --
 12 MR. LONGMAN: I just want to advise
 13 you not to disclose any communications you had
 14 with your lawyer, either you speaking to your
 15 lawyers or your lawyers speaking to you. With
 16 that advice, you can answer the question without
 17 violating that privilege.
 18 A. I was shown the information, and I
 19 agreed upon it.
 20 BY MR. BLANCHARD:
 21 Q. Could you turn to page 74 of Exhibit
 22 25? Are you there?
 23 A. Mm-hmm.
 24 Q. Yes?

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1 A. Yes.
 2 Q. There's a chart at the bottom, and it
 3 shows the date that shares were sold by Rausch,
 4 correct?
 5 A. Correct.
 6 Q. And the dates listed are 4-15-03,
 7 6-5-03, 6-24-03, 6-25, 26, 27 and 6-30-03, 8-5,
 8 8-6, 8-7, 8-8, 8-12 and 8-13 and 8-28-03,
 9 correct?
 10 A. Correct.
 11 Q. Now, you didn't purchase any shares on
 12 any of those dates, did you?
 13 A. No, just the dates that you have.
 14 Q. Right.
 15 MR. BLANCHARD: Do you want to take a
 16 break? Take a break.
 17 (Whereupon, a recess was taken from
 18 4:54 p.m. to 5:54 p.m.)
 19 MR. BLANCHARD:
 20 (Whereupon, Exhibit 26 was marked for
 21 identification.)
 22 BY MR. BLANCHARD:
 23 Q. We're back on the record.
 24 Have you ever seen Exhibit 26 before?

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1 A. Did I see what? What was the
 2 question?
 3 Q. Exhibit 26 before.
 4 A. Yes.
 5 Q. Can you tell me what it is?
 6 A. It's the Biopure annual report for
 7 October 31st, 2002.
 8 Q. Is there anything false or misleading
 9 in this report, or is there anything you claim
 10 to be false and misleading in this report?
 11 MR. LONGMAN: Objection.
 12 A. I don't know. I saw it, browsed
 13 through it, but --
 14 MR. LONGMAN: Do you want him to read
 15 the document?
 16 A. I don't remember at this point in
 17 time.
 18 BY MR. BLANCHARD:
 19 Q. You don't remember at this point in
 20 time?
 21 A. Right. I mean back then when I looked
 22 at it thoroughly and so forth.
 23 Q. When did you first see it?
 24 A. I got a copy of it probably January of

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1 2003, I believe, something like that, January,
 2 February.
 3 Q. Where did you get a copy of it from?
 4 A. I had went ahead and looked it up on
 5 the Internet.
 6 Q. Do you recall whether you read it?
 7 A. If I did, it was just browsing through
 8 it quickly.
 9 MR. LONGMAN: Do you want him to look
 10 through it now to see if there's anything
 11 misleading?
 12 MR. BLANCHARD: No.
 13 MR. LONGMAN: It's a 54 page document.
 14 MR. BLANCHARD: Do you want him to?
 15 MR. LONGMAN: It's your deposition,
 16 you asked him the question.
 17 MR. BLANCHARD: I did. He answered
 18 it.
 19 MR. LONGMAN: He can't remember.
 20 (Whereupon, Exhibit 27 was marked for
 21 identification.)
 22 BY MR. BLANCHARD:
 23 Q. Do you have Exhibit 27 in front of
 24 you?

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1 (Witness reviewing document.)
 2 BY MR. BLANCHARD:
 3 Q. I'm sorry, I didn't hear if you
 4 answered. Do you have Exhibit 27 before you?
 5 A. Yes.
 6 Q. Have you ever seen Exhibit 27 before?
 7 MR. LONGMAN: I'd like you to give him
 8 some time to review the document.
 9 MR. BLANCHARD: Sure.
 10 BY MR. BLANCHARD:
 11 Q. Take some time to review it. I'm
 12 sorry.
 13 (Witness reviewing document.)
 14 A. I don't remember seeing this. I mean
 15 the print is pretty shrunk.
 16 BY MR. BLANCHARD:
 17 Q. It's, if you -- I'm sorry, if you turn
 18 to the second page it indicates it's a Form S-3
 19 filed by Biopure, I think on April 11th, 2003?
 20 MR. LONGMAN: It says it's a
 21 post-effective amendment number two to a Form
 22 S-3.
 23 MR. BLANCHARD: That's correct.
 24 BY MR. BLANCHARD:

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1 Q. As filed with the Securities &
 2 Exchange Commission on April 11th, 2003.
 3 Do you recall reading this document
 4 maybe in another form ever?
 5 A. Maybe in another form. I don't recall
 6 this one.
 7 Q. If I could direct your attention to
 8 page five.
 9 A. Okay.
 10 Q. There's a paragraph with the heading
 11 "if we fail to obtain FDA approval we cannot
 12 market Hemopure in the United States."
 13 Would you take a moment and just read
 14 that paragraph that follows that sentence?
 15 A. Right here.
 16 MR. LONGMAN: No, right here
 17 (indicating).
 18 (Witness reviewing document.)
 19 A. Okay.
 20 BY MR. BLANCHARD:
 21 Q. Do you recall ever reading that
 22 language before?
 23 A. I believe I've seen it.
 24 Q. When?

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1 A. I'm not sure exactly when.
 2 MR. LONGMAN: I want to object.
 3 When you say "this language," are you
 4 referring to --
 5 MR. BLANCHARD: To the paragraph that
 6 he just read.
 7 MR. LONGMAN: The entire paragraph?
 8 MR. BLANCHARD: Yes.
 9 MR. LONGMAN: When you answer that,
 10 you've seen the entire paragraph.
 11 A. No, I haven't seen the whole
 12 paragraph. I knew that they were going for FDA
 13 approval and so forth, as far as I haven't seen
 14 that.
 15 BY MR. BLANCHARD:
 16 Q. Is there anything -- I'm sorry, I
 17 didn't mean to interrupt you. Go ahead and
 18 finish.
 19 A. As far as going ahead, refusal to
 20 grant marketing authorizations or trials, are
 21 expensive and time consuming, I didn't see that.
 22 Q. Read for me where you believe -- why
 23 don't you tell me what portions of it you
 24 believe you have seen before.

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1 A. "Filed for an application for approval
 2 of the FDA and application to acceptance review
 3 October 1st, 2002. I believe that our completed
 4 pivotal phase three clinical trials are
 5 consistent with the FDA's most recent guidance
 6 and design efficient --" is that supposed to be
 7 efficiency?
 8 Q. Efficacy.
 9 A. "-- and safety end points required for
 10 approval of product such as Hemopure for use in
 11 surgical indications."
 12 MR. LONGMAN: Is this -- I think he's
 13 asked you what parts have you seen.
 14 A. Oh, that I've seen written. I don't
 15 know if I've seen it in this.
 16 MR. LONGMAN: Everything you just read
 17 from the beginning of the paragraph until
 18 indications?
 19 A. Without the beginning of the
 20 paragraph, we filed for application, they filed
 21 for application in that sense.
 22 MR. LONGMAN: Not the first sentence?
 23 THE WITNESS: No.
 24 BY MR. BLANCHARD:

40 (Pages 154 to 157)

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1 Q. Is that it from that paragraph?
 2 MR. LONGMAN: Have you seen any of the
 3 other?
 4 THE WITNESS: No.
 5 BY MR. BLANCHARD:
 6 Q. Okay. Is there anything that you view
 7 as false or misleading about the sentences you
 8 just read?
 9 MR. LONGMAN: Objection.
 10 A. No, not for what I just read.
 11 BY MR. BLANCHARD:
 12 Q. Do you believe that --
 13 A. I mean it's --
 14 BY MR. BLANCHARD:
 15 Q. Do you believe --
 16 MR. LONGMAN: Are you through with
 17 your answer?
 18 THE WITNESS: Yes.
 19 BY MR. BLANCHARD:
 20 Q. Do you believe that the company should
 21 have said anything that it didn't in here in
 22 light of what it did say in those sentences you
 23 just read?
 24 A. Yes. I think when the trials were put

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1 on hold in April, in that sense, they led it to
 2 believe that they were not -- that they were
 3 just normal function, and everything was going
 4 to be smooth. I was not aware of that at that
 5 point.
 6 So as far as what I read just from the
 7 second sentence to probably the second and third
 8 sentence there or whatever, I mean I've read
 9 that elsewhere, fine, the bottom portion I have
 10 not.
 11 MR. LONGMAN: I don't know if you're
 12 responding to a question.
 13 Can you read his question back?
 14 (Whereupon, the reporter read back the
 15 pending question.)
 16 MR. LONGMAN: Okay. And then you
 17 answered, I think.
 18 MR. BLANCHARD: Can I hear the answer
 19 back?
 20 (Whereupon, the reporter read back the
 21 above answer.)
 22 BY MR. BLANCHARD:
 23 Q. When you said the trials were put on
 24 hold, do you know why the trials were put on

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1 hold?
 2 A. I would say, you know, I didn't go
 3 in-depth into it, I would say that for the
 4 trials they were having problems with the
 5 trials, with the patients and everything, and
 6 that's why they were probably put on hold by the
 7 FDA.
 8 Q. Was it more than one trial that was
 9 put on hold?
 10 A. It was clinical trials that were put
 11 on hold.
 12 Q. Was it more than one?
 13 A. Yes. Well, I mean if you're going to
 14 go ahead, one clinical trial or further clinical
 15 trials, what are you saying? They have to do
 16 more than one trial, it's not just one patient
 17 or so.
 18 Q. Okay. Right. I mean it could be more
 19 patients, but what's your understanding of what
 20 a clinical trial is?
 21 A. I mean if you're going to go ahead and
 22 say clinical trial, which encompasses a lot of
 23 patients, then yes, it's one clinical trial for
 24 the Hemopure.

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1 Q. Okay. Do you know, was that clinical
 2 trial, did it involve a particular use for
 3 Hemopure?
 4 A. It was for more so the orthopedic part
 5 as far as doing, I mean like knee replacements
 6 or anything like that, or in service to go ahead
 7 and end up having damage with joints where they
 8 need to go ahead and have a blood supply where
 9 there was a lot of loss of blood or something
 10 like that, that's what they'd use it for, my
 11 understanding.
 12 Q. And that clinical trial was put on
 13 hold?
 14 A. To the best of my knowledge, yes.
 15 Q. Pardon me if I already asked this, I
 16 don't know if I asked it exactly the same, but
 17 do you know why FDA put a clinical trial on
 18 hold?
 19 MR. LONGMAN: He just answered the
 20 question.
 21 A. Because they thought it wasn't
 22 working.
 23 BY MR. BLANCHARD:
 24 Q. Okay. Did FDA communicate anything

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1 specific about the clinical trial?
 2 MR. LONGMAN: I just want to point --
 3 A. I think the patients were, the
 4 patients were at risk. That's probably why they
 5 put it on hold.
 6 BY MR. BLANCHARD:
 7 Q. Okay.
 8 A. They weren't having a lot of success
 9 with it was my understanding.
 10 Q. Okay. So you -- when you say that's
 11 probably why they put it on hold, I just
 12 question whether you're speculating or telling
 13 me if you know from some source.
 14 MR. LONGMAN: He gave you an answer.
 15 You can ask him the basis.
 16 A. I don't have definitive --
 17 MR. LONGMAN: Wait, I talk, then you
 18 talk.
 19 You asked him a question, he gave you
 20 an answer, and now you say I don't know if
 21 you're speculating. Where does that come from?
 22 MR. BLANCHARD: The raising of your
 23 tone is noted for the record, I don't appreciate
 24 it.

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1 It comes from the ambiguity of the
 2 answer.
 3 MR. LONGMAN: I raised my tone?
 4 MR. BLANCHARD: Yes, you did. And I
 5 don't appreciate it. Thank you.
 6 I will do my best, it is getting late
 7 in the day, to ask the clearest questions
 8 possible. If my question isn't clear, then
 9 please make an objection, but otherwise please
 10 just limit your statements to objections.
 11 MR. LONGMAN: Okay. Was your
 12 testimony speculation, is that what you're
 13 asking him?
 14 MR. BLANCHARD: I was asking if he was
 15 speculating as to whether or not --
 16 A. It was my interpretation of what I've
 17 heard as far as read on the Internet and in the
 18 claims that were made.
 19 BY MR. BLANCHARD:
 20 Q. At what point did you learn that a
 21 clinical trial was put on hold?
 22 A. I would say not for -- not for quite a
 23 while. I think it was probably, it was later,
 24 third or fourth quarter, 2003.

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1 Q. Can you be more specific as to when it
 2 was? Third or fourth quarter is a six month
 3 period.
 4 A. Well, I knew it wasn't, and I knew it
 5 wasn't in -- I knew it wasn't up until August
 6 because August -- remember the stock going up
 7 quite a bit, September, October, somewhere in
 8 there, October, November, December, somewhere in
 9 there that I ended up hearing about it.
 10 Q. Okay. Do you recall how you heard
 11 that a clinical trial was put on hold?
 12 A. I started reading information on it
 13 through either the Internet or whatever. I
 14 didn't -- I didn't get anything from the company
 15 saying that, that I can remember.
 16 (Whereupon, Exhibit 28 was marked for
 17 identification.)
 18 BY MR. BLANCHARD:
 19 Q. Do you have Exhibit 28 in front of
 20 you?
 21 (Witness reviewing document.)
 22 BY MR. BLANCHARD:
 23 Q. Do you have Exhibit 28 in front of
 24 you? I'm sorry.

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1 A. Yes.
 2 Q. It is a post-effective amendment
 3 number one to Form S-3 registration statement
 4 under the Securities Act of 1933 filed with the
 5 SEC on April 16th, 2003 by Biopure, correct?
 6 I'm just reading that off the first page.
 7 A. Yes.
 8 Q. Do you recall ever reading this
 9 document, maybe not in exactly this form?
 10 MR. LONGMAN: You're going to have to
 11 give him a minute to look at the document.
 12 MR. BLANCHARD: Sure. Yes.
 13 BY MR. BLANCHARD:
 14 Q. When I ask that question, I'm sorry, I
 15 mean for you to look it over.
 16 (Witness reviewing document.)
 17 A. I don't honestly remember.
 18 BY MR. BLANCHARD:
 19 Q. Okay.
 20 (Whereupon, Exhibit 29 was marked for
 21 identification.)
 22 BY MR. BLANCHARD:
 23 Q. Do you have Exhibit 29 in front of
 24 you?

42 (Pages 162 to 165)

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1 A. Yes.
 2 Q. Actually I'm sorry, I marked the wrong
 3 one. Can we give you a new 29 and make that 30?
 4 (Whereupon, Exhibit 30 was marked for
 5 identification.)
 6 MR. LONGMAN: What did you just hand
 7 me, 29 or 30?
 8 MR. BLANCHARD: The April 1st should
 9 be 29, and May should be 30.
 10 BY MR. BLANCHARD:
 11 Q. I'll make sure we're on the same page,
 12 I'm sorry for the confusion.
 13 Do you have Exhibit 29 before you?
 14 A. Yes.
 15 Q. And is Exhibit 29 a document entitled
 16 "Biopure Awards Public Relations and Medical
 17 Education Accounts in Support of Hemopure"?
 18 A. Yes.
 19 Q. Have you ever read Exhibit 29 before,
 20 or any part of it?
 21 A. I might have.
 22 Q. Do you recall when you would have, you
 23 might have read it?
 24 MR. LONGMAN: That would be

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1 speculation, if he might have. I'm not sure if
 2 he read it or not.
 3 MR. BLANCHARD: I'm asking when he
 4 might have read it, if he might have read it
 5 when might he have read it.
 6 A. Around the time it was released.
 7 BY MR. BLANCHARD:
 8 Q. Okay. But you don't know whether or
 9 not you read it?
 10 A. I mean I might have read something
 11 similar or I might have read this, one or --
 12 MR. TUCCILLO: Mike, for the record,
 13 the 5-26-06 is the access date that you printed
 14 it, right?
 15 MR. BLANCHARD: Yes.
 16 MR. TUCCILLO: That's obviously not
 17 part of what you're asking if he read it, this
 18 is something you printed out?
 19 MR. BLANCHARD: Yes, in substance, in
 20 substance.
 21 BY MR. BLANCHARD:
 22 Q. If we can turn to Exhibit 30. And if
 23 we've got the right Exhibit 30 it should be
 24 "Biopure Announces 2003 Second Quarter Financial

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1 Results"?
 2 A. Yes.
 3 Q. Take a moment to review that document,
 4 please.
 5 (Witness reviewing document.)
 6 A. Okay.
 7 BY MR. BLANCHARD:
 8 Q. Is there anything in Exhibit 30 that
 9 you contend is false or misleading?
 10 A. Not that I can --
 11 MR. LONGMAN: Take your time to look
 12 through it.
 13 (Witness reviewing document.)
 14 A. Okay. So this release was done in May
 15 22nd, 2003, correct?
 16 BY MR. BLANCHARD:
 17 Q. Correct. That's what's indicated on
 18 the first page at the top.
 19 (Witness reviewing document.)
 20 A. On the second paragraph where it's
 21 bull's eyed and it says "based on FDA
 22 performance goals and guidelines, the
 23 prescription drug," it says "Biopure is hopeful
 24 that in mid 2003 the FDA will complete its

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1 review and act on Biopure's biological license
 2 application."
 3 It doesn't say -- it leads you to
 4 believe that everything is fine at that point in
 5 time, that they didn't put a hold on any of the
 6 clinical trials at all or anything. I'd say
 7 that that is misleading in that sense to me for
 8 not going ahead and at least having something in
 9 there in regard -- they lead it to believe that
 10 it's going to be -- they're going to complete
 11 their review by 2003 when they've already done a
 12 portion of the review and already put a hold on
 13 the clinical trials.
 14 Q. And --
 15 A. And this is in May, and they did that
 16 in April.
 17 Q. It mentions Prescription Drug User Fee
 18 Act, also referred to as PDUFA.
 19 Are you familiar with PDUFA at all?
 20 A. No, not completely.
 21 Q. Are you partially?
 22 A. I've read it, I've -- a little bit,
 23 but not -- it wasn't their main product.
 24 Hemopure was more what I was interested in.

43 (Pages 166 to 169)

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1 Q. You read PDUFA or parts of it?
 2 A. I've read of it a little bit and
 3 that's it. I just passed over it because the
 4 Hemopure is what I was looking at.
 5 Q. Do you know when the FDA completed its
 6 review of Biopure's biologics license
 7 application?
 8 A. No, I don't remember.
 9 Q. Do you remember what year? Do you
 10 remember if they did at all?
 11 MR. LONGMAN: Objection. I was going
 12 to say no foundation for the question.
 13 BY MR. BLANCHARD:
 14 Q. Do you know whether they completed
 15 their review of the BLA, biologics license
 16 application, at all?
 17 A. For Hemopure?
 18 Q. Let me just re-ask it.
 19 Do you know whether the FDA completed
 20 their review or its review of the biologics
 21 license application for Hemopure for Biopure at
 22 all?
 23 MR. LONGMAN: I think he testified
 24 earlier he wasn't sure what biologics

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1 completed its review of that biologics license
 2 application?
 3 And if my question is asking something
 4 that you don't understand, then please tell me.
 5 MR. LONGMAN: Objection.
 6 A. Okay. I don't understand. As far as
 7 the Prescription Drug User Fee Act, the PDUFA, I
 8 might have that confused with the Hemopure in
 9 that sense. And if it's got nothing to do with
 10 the Hemopure, then that's different from what I
 11 was thinking.
 12 MR. LONGMAN: He's asking you a
 13 question. Repeat the --
 14 A. I'm not sure what -- I don't
 15 understand the question.
 16 MR. LONGMAN: Can you repeat the
 17 question?
 18 (Whereupon, the reporter read back the
 19 pending question.)
 20 MR. LONGMAN: Do you understand the
 21 question?
 22 A. Have they fulfilled on the
 23 application?
 24 BY MR. BLANCHARD:

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1 application was.
 2 MR. BLANCHARD: Please let him answer.
 3 MR. LONGMAN: Do you want an answer to
 4 the question or do you want to confuse the
 5 witness?
 6 MR. BLANCHARD: Are you going to
 7 testify, or are you going to let him answer?
 8 MR. LONGMAN: No, I want to get clear
 9 answers, and we're going to walk out of here if
 10 you insist on trying to muddy the record.
 11 He testified earlier today he did not
 12 know what a biological license, so ask it in a
 13 way that's comprehensible.
 14 BY MR. BLANCHARD:
 15 Q. Based on what you just read to me that
 16 you contend is false and misleading in this
 17 application and you sued my client for which
 18 refers to a biologics license --
 19 A. That refers --
 20 Q. Please just let me finish the
 21 question.
 22 A. Okay.
 23 Q. -- which refers to a biologics license
 24 application, do you know whether FDA ever

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1 Q. I'm sorry, what did you say?
 2 A. Okay, what was --
 3 Q. Have they what? I just misheard.
 4 A. I'm not sure what you're getting at.
 5 Q. Let's just back up and take it from
 6 the beginning.
 7 You indicated that, I thought you
 8 indicated, tell me if I'm wrong, that based on
 9 FDA performance, goals and guidelines in the
 10 PDUFA "Biopure is hopeful that mid-2003 the FDA
 11 will complete its review and act on Biopure's
 12 biologics license application, BLA, to market
 13 Hemopure in the United States for treatment of
 14 acutely anemic adult patients undergoing
 15 orthopedic surgery." And I believe you
 16 indicated that that statement was false or
 17 misleading because there was a clinical hold.
 18 A. No, I was incorrect on that.
 19 Q. Okay. I apologize for the whole line
 20 of questioning.
 21 So is there anything in that statement
 22 that is false or misleading in your view?
 23 MR. LONGMAN: He's answered this
 24 question before.

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1 MR. BLANCHARD: He just told me --
 2 MR. LONGMAN: Now you're trying --
 3 MR. HUANG: He just changed his
 4 response.
 5 MR. BLANCHARD: He changed his
 6 response.
 7 A. That has to do with in a sense for
 8 acute anemic adult patients, and that was the
 9 portion where I was -- I read over quickly, and
 10 go ahead. So there's a difference there. So
 11 I'd say no, as far as I'm not aware of any at
 12 this point on this.
 13 MR. LONGMAN: On what?
 14 THE WITNESS: As far as this document.
 15 MR. LONGMAN: I don't understand what
 16 your answer is.
 17 MR. BLANCHARD: I don't either, I'm
 18 sorry.
 19 A. Okay. Ask the question again.
 20 BY MR. BLANCHARD:
 21 Q. Is there anything false or misleading
 22 in that sentence that we've just been reading?
 23 A. Not that I can see.
 24 Q. Now, you've testified earlier that

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1 you're aware that Biopure has submitted an
 2 application for FDA approval of Hemopure,
 3 correct?
 4 A. Mm-hmm.
 5 Q. That application was pending in 2003,
 6 correct?
 7 A. Yes.
 8 Q. Are you aware of whether the FDA ever
 9 completed its review of that application?
 10 MR. LONGMAN: Objection.
 11 A. I don't believe they have. I don't
 12 believe they've answered the 200 some odd
 13 questions, to the best of my knowledge, to go
 14 ahead and have the review finished. I think
 15 they either put it on hold or denied it, because
 16 they have not gone ahead and answered all the
 17 questions.
 18 BY MR. BLANCHARD:
 19 Q. Okay.
 20 (Whereupon, Exhibit 31 was marked for
 21 identification.)
 22 BY MR. BLANCHARD:
 23 Q. Do you have Exhibit 31 in front of
 24 you?

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1 A. Yes.
 2 Q. It's labeled on the first page "Final
 3 Transcript CCBN Street Events, Event Transcript,
 4 BPUR or Biopure Q-2, 2003, Corporation Earnings
 5 Conference Call, May 22nd, 2003."
 6 In substance is that correct, that's
 7 what it is?
 8 A. Yes.
 9 Q. Okay. This appears to be a transcript
 10 of a conference call that the company had May
 11 22nd, correct?
 12 A. It appears to be.
 13 Q. Okay. You mentioned that you had
 14 listened in on a Biopure call at some point.
 15 Was this the call you listened to?
 16 A. I'm not sure if this was the one I
 17 listened to. I'd have to read through it to
 18 find out.
 19 Q. Do you recall when --
 20 MR. LONGMAN: Let him -- do you need
 21 to read through it to find out?
 22 A. I'm not sure if this was the one, or I
 23 mean I listened to a couple.
 24 BY MR. BLANCHARD:

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1 Q. Okay.
 2 MR. LONGMAN: If by reading through
 3 it, can you find out if this was the one?
 4 THE WITNESS: I might be able to.
 5 MR. LONGMAN: Read through it.
 6 BY MR. BLANCHARD:
 7 Q. Go right ahead and read through it.
 8 (Witness reviewing document.)
 9 A. I might have listened to this, because
 10 there's some segments here that I remember.
 11 BY MR. BLANCHARD:
 12 Q. What segments?
 13 A. Either I read it or I went ahead and
 14 ended up listening to it or whatever.
 15 Q. Okay. I guess just to figure out how
 16 relevant it is, did you read it, you know, in
 17 2003 or sometime after, or did you --
 18 A. I'd say it was in 2003.
 19 Q. Okay. After, you know, reviewing this
 20 briefly I recognize, the segments that you
 21 recognize, what are they?
 22 A. Well, as far as going ahead in the
 23 first paragraph, that portion. As far as the
 24 third paragraph.

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1 Q. I'm sorry, if you could identify the
2 paragraph, just read me the first couple words?
3 A. First paragraph, "at this call last
4 quarter I was asked to give a rough estimate on
5 how much we would ship in this quarter, and I
6 estimated between one and eight quarters, and in
7 two, and a quarter million."
8 Then the third paragraph, "last
9 quarter I also indicated that we anticipated
10 additional military support beyond then the then
11 4.9 million that had been appropriated."
12 Those two.
13 Q. Is there anything false or misleading
14 in your view in any of those statements?
15 A. No.
16 (Whereupon, Exhibit 32 was marked for
17 identification.)
18 BY MR. BLANCHARD:
19 Q. You have Exhibit 32 in front of you?
20 A. Yes.
21 Q. And it's a transcript of a May 30th
22 conference call, correct, for Biopure?
23 A. That's what it says.
24 Q. If you could take a moment to review

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1 the document, I'll ask you a few questions.
2 (Witness reviewing document.)
3 A. Okay.
4 BY MR. BLANCHARD:
5 Q. Do you recall whether you listened in
6 on this investor call?
7 A. I think I might have missed this one.
8 Q. You might have missed it?
9 A. Yes.
10 (Whereupon, Exhibit 33 was marked for
11 identification.)
12 BY MR. BLANCHARD:
13 Q. Do you have Exhibit 33 before you?
14 A. Yes.
15 Q. And that is a press release, correct?
16 A. It looks that way, yes.
17 Q. It's titled "U.S. FDA Finalizes
18 Response Date For Biopure's Marketing
19 Application of Hemopure," correct?
20 A. Mm-hmm.
21 Q. Do you recall whether you've ever seen
22 this document before? Please take all the time
23 you need to review it.
24 (Witness reviewing document.)

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1 A. I think I might have missed this with
2 the conference call. It was the same day as
3 this talking about the same day. I might have
4 read this later on.
5 BY MR. BLANCHARD:
6 Q. Okay.
7 A. Other than the May 30th.
8 Q. Do you recall ever learning that the
9 FDA took an extension on the amount of time it
10 was going to take to review the Biopure
11 application for approval of Hemopure during
12 2003?
13 A. I remember them filing, that they were
14 filing for an extension or whatever, something
15 like that.
16 Q. I don't --
17 MR. LONGMAN: Let him finish.
18 A. Biopure was going for a filing an
19 extension for the application.
20 BY MR. BLANCHARD:
21 Q. Are you --
22 A. Is that what you were asking?
23 Q. Well, okay. If you're done with your
24 answer, I just don't want to interrupt. Are you

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1 done?
2 A. Mm-hmm.
3 Q. When you say they were filing for an
4 extension, who was filing for an extension?
5 A. Biopure was.
6 Q. And they sought an extension of the
7 amount of time for FDA to complete its review of
8 the application?
9 A. I believe so.
10 Q. Do you know whether Biopure's request
11 for an extension was ever granted?
12 A. I don't know.
13 Q. Do you know if the amount of time the
14 FDA was going to take to review Biopure's
15 application for approval of Hemopure -- wow,
16 it's getting late, I'm sorry. Can you read back
17 -- I'll try to ask the question again, I lost it
18 in midstream.
19 Do you know whether the FDA ever
20 extended the time that it was going to take to
21 review, to complete its review of Biopure's
22 application of Hemopure?
23 MR. LONGMAN: Isn't that what you
24 just --

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1 MR. BLANCHARD: Maybe it is, but I'm
2 not sure.
3 A. And I -- I'm not sure.
4 BY MR. BLANCHARD:
5 Q. Okay. Great. Thank you. I
6 apologize.
7 (Off the record discussion.)
8 (Whereupon, Exhibit 34 was marked for
9 identification.)
10 BY MR. BLANCHARD:
11 Q. Do you have Exhibit 34 before you?
12 A. Yes.
13 Q. Take a moment and review it, please.
14 (Witness reviewing document.)
15 A. Okay.
16 BY MR. BLANCHARD:
17 Q. You've reviewed it?
18 A. Most of it.
19 Q. Let me know when you're ready, I'm
20 sorry.
21 (Witness reviewing document.)
22 A. Okay.
23 BY MR. BLANCHARD:
24 Q. Okay. Have you ever seen Exhibit 34

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1 before?
2 A. I believe I have.
3 Q. Do you recall when you saw it?
4 A. I would have seen it in probably
5 somewhere in August, 2003.
6 Q. Did you read it?
7 A. Yes.
8 Q. In your view, is there anything false
9 or misleading about what's contained in Exhibit
10 34?
11 A. No, at that point, no.
12 Q. Say that again?
13 A. No.
14 (Whereupon, the witness and his
15 counsel conferred.)
16 MR. BLANCHARD: Does counsel need to
17 take a break with the witness? Do you need to
18 take a break?
19 MR. LONGMAN: There's no question
20 pending, is there?
21 MR. BLANCHARD: No, but if you want to
22 take a break, take a break.
23 (Whereupon, the witness and his
24 counsel conferred.)

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1 BY MR. BLANCHARD:
2 Q. Have you ever heard the term "complete
3 response letter" before?
4 A. I don't believe so.
5 Q. So that term doesn't have any
6 significance for you?
7 A. Well, complete response letter as far
8 as divulging everything that I had? I mean --
9 Q. It's not really a fair question to ask
10 you what the significance is if you never really
11 heard it before. I'm just making sure that when
12 someone says "complete response letter" it
13 doesn't mean anything particular to you.
14 MR. LONGMAN: You mean in the context
15 of an FDA? I mean --
16 MR. BLANCHARD: Sure, in any context.
17 MR. LONGMAN: Any complete response
18 letter in the world? You have to put it in
19 context.
20 BY MR. BLANCHARD:
21 Q. Well, in the context of FDA
22 regulations, have you ever heard the term
23 "complete response letter"?
24 A. I might have. I mean as far as going

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1 ahead with the terminology, might have. But I
2 mean as far as going ahead, I have probably a
3 different view of what it is than what you do or
4 whatever else.
5 Q. Well, do you have a view of what a
6 complete response letter is in the context of
7 FDA terminology?
8 A. No.
9 Q. Have you ever heard the term complete
10 response letter in connection with this
11 litigation?
12 A. I might have. I'm trying to -- it's
13 been a long day, I'm going ahead and kind of
14 trying to remember, it's a little cloudy.
15 Q. Understood.
16 But you're not sure?
17 A. Right.
18 Q. And the term doesn't carry any
19 significance for you in the context of this
20 litigation?
21 MR. LONGMAN: I think he just answered
22 that.
23 A. I mean in the context, I mean what
24 comes to mind, okay, in a sense as far as to me

47 (Pages 182 to 185)

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1 would be in July when they had the 200 questions
2 that they had to answer, I assume that that
3 would be what would be sent out, and that's what
4 they'd have to do to go ahead and complete it.
5 But I don't know if that's what you're getting
6 at or what, so I'm saying that I'm kind of brain
7 dead right at the moment.

8 BY MR. BLANCHARD:

9 Q. I get you. I'm just trying to get
10 whatever your understanding of a complete
11 response letter is both in the FDA context and
12 this litigation, what your understanding is, and
13 I think you've answered both those.

14 MR. LONGMAN: Okay. Do you want to
15 take a break? Are you tired?

16 THE WITNESS: I'm okay. I'll be more
17 tired if we take a break and come back.
18 (Whereupon, Exhibit 35 was marked for
19 identification.)

20 BY MR. BLANCHARD:

21 Q. Do you have Exhibit 35 in front of
22 you?

23 A. Yes.

24 Q. Please take all the time you need to

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1 A. I believe so.

2 Q. Is there anything in Exhibit 35 that
3 you believe is false or misleading?

4 A. No. I'd say that's -- recent
5 corporate events is more so that ended up --
6 that I remember in that paragraph and so forth.
7 As far as, yes, I'd say that just more so
8 stating what they came out with at that point in
9 time.

10 Q. Is there anything in that recent
11 corporate events paragraph that you believe is
12 false or misleading?

13 A. I think they're stating it at that
14 point in time where they didn't have the -- you
15 know, up until then as far as they didn't
16 divulge what -- no, I'd say that's fine.

17 Q. I'm sorry, that just got a little
18 jumbled on me there.

19 A. Yes, I'm jumbling.

20 MR. TUCCILLO: Could you read back his
21 answer, please?

22 (Whereupon, the reporter read back the
23 above answer.)

24 BY MR. BLANCHARD:

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1 review it.

2 (Witness reviewing document.)

3 A. Okay.

4 BY MR. BLANCHARD:

5 Q. You've had time to review it?

6 A. Yes.

7 Q. Exhibit 35. Have you ever seen it
8 before?

9 MR. LONGMAN: What did you say?

10 BY MR. BLANCHARD:

11 Q. Have you ever seen it before, Exhibit
12 35?

13 A. I believe so.

14 Q. I'm sorry, did you say I don't believe
15 so?

16 A. I believe so.

17 Q. You believe so.

18 Do you recall when you've seen it?

19 A. It would have been in August sometime.

20 Q. Did you read it?

21 I'm sorry, when you say August,
22 August, 2003?

23 A. Yes.

24 Q. Did you read it at that time?

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1 Q. Go ahead.

2 MR. LONGMAN: He's asking you if
3 there's anything false or misleading.

4 A. No, I think it's fine.

5 BY MR. BLANCHARD:

6 Q. Okay. Thank you.

7 MR. LONGMAN: Can we take a short
8 break?

9 MR. BLANCHARD: Sure.

10 (Whereupon, a recess was taken from
11 6:52 p.m. to 7:03 p.m.)

12 BY MR. BLANCHARD:

13 Q. I'm sorry, I didn't give you the
14 August 21st conference call yet, did I? No, I
15 did not.

16 (Whereupon, Exhibit 36 was marked for
17 identification.)

18 BY MR. BLANCHARD:

19 Q. Do you have Exhibit 36 in front of
20 you?

21 A. Yes.

22 Q. If you could take a moment to review
23 it, please.

24 (Witness reviewing document.)

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1 A. Okay.
 2 BY MR. BLANCHARD:
 3 Q. You've had an opportunity to review
 4 it?
 5 A. Somewhat, yes.
 6 Q. It appears to be a transcript of an
 7 investor conference call on August 21st, 2003,
 8 correct?
 9 A. Mm-hmm, yes.
 10 Q. Do you recall whether you listened in
 11 to that call?
 12 A. I don't recall.
 13 Q. And does the review of this document
 14 refresh your memory at all?
 15 A. No, it doesn't, as far as -- I mean
 16 any of the information right now, it's getting
 17 late in the day, and I'm not really -- as far as
 18 being able to read all this information as
 19 quickly as needed, in that sense, but none of it
 20 is giving -- I mean it's -- it may have some
 21 true statements in it, but in the sense it still
 22 does not go ahead and --
 23 MR. LONGMAN: That's not what he asked
 24 you.

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1 MR. BLANCHARD: I agree.
 2 MR. LONGMAN: What's the question
 3 pending? Listen to the question he's asking
 4 you.
 5 (Whereupon, the reporter read back the
 6 above questions and answers.)
 7 MR. LONGMAN: Does it refresh your
 8 recollection?
 9 THE WITNESS: No.
 10 BY MR. BLANCHARD:
 11 Q. Did you speak with your attorney
 12 during the break?
 13 A. Yes, I did. Is that a problem?
 14 Q. No, not at all?
 15 (Whereupon, Exhibit 37 was marked for
 16 identification.)
 17 BY MR. BLANCHARD:
 18 Q. Do you have Exhibit 37 in front of
 19 you?
 20 A. Yes.
 21 Q. Okay. I'm not going to ask you to
 22 review this whole document.
 23 A. Thank you.
 24 Q. I'm only going to ask you whether or

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1 not you have a recollection of seeing a
 2 prospectus for Biopure during September of 2003.
 3 A. I might have. Right now I don't
 4 recollect.
 5 Q. Okay. And do you have any independent
 6 recollection of seeing this particular document?
 7 A. I might have. I don't recollect.
 8 (Whereupon, Exhibit 38 was marked for
 9 identification.)
 10 BY MR. BLANCHARD:
 11 Q. Do you have Exhibit 38 before you?
 12 A. Yes.
 13 Q. This also is a prospectus from 2003,
 14 September 15th, a few days after the Exhibit 37
 15 which was September 12th.
 16 Again I'm not going to ask you to
 17 review the whole document, but do you have a
 18 recollection of seeing this document?
 19 A. I might have. I don't recollect
 20 honestly.
 21 Q. Okay.
 22 (Whereupon, Exhibit 39 was marked for
 23 identification.)
 24 BY MR. BLANCHARD:

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1 Q. Do you have Exhibit 39 in front of
 2 you?
 3 A. I do.
 4 Q. Just reviewing the top of the first
 5 page, it's a Biopure presentation by Tom Moore
 6 to UBS Global Life Sciences Conference, New
 7 York, New York, September 25th, 2003. Correct?
 8 A. Yes.
 9 Q. Do you recall hearing about this
 10 conference in any way?
 11 A. I believe I did.
 12 Q. Were you a participant at all?
 13 (Witness reviewing document.)
 14 A. No, I don't believe so.
 15 BY MR. BLANCHARD:
 16 Q. How do you recall hearing about it?
 17 A. I think I read up on it afterwards.
 18 Q. Have you ever read this document,
 19 recognizing that you haven't reviewed the entire
 20 thing right here?
 21 A. Right. I might have. But I remember
 22 the conference in that sense, so I must have
 23 read something after.
 24 Q. What do you remember hearing about the

Page 194

1 conference?

2 A. I think it was just talking about the
3 -- I think the military was -- it's becoming --
4 getting very vague on it right now, but it was
5 more so just talking about Biopure and the
6 hemoglobin and as far as going ahead. From what
7 I remember of it talking about the importance of
8 how it would affect -- be useful in the
9 military. But I mean that may not be the same
10 conference.

11 MR. BLANCHARD: Could you read my
12 question back, please?

13 (Whereupon, the reporter read back the
14 pending question.)

15 A. I'm sorry, I'm getting tired.

16 BY MR. BLANCHARD:

17 Q. Don't apologize. Not at all. It's
18 hard when you get a late start like this.

19 (Whereupon, Exhibit 40 was marked for
20 identification.)

21 A. I'd say I don't remember.

22 BY MR. BLANCHARD:

23 Q. Do you have Exhibit 40 before you?

24 A. Yes.

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1 BY MR. BLANCHARD:

2 Q. Do you recall ever reading this
3 document, besides right now?

4 A. I might have. I don't recall it
5 completely.

6 Q. This is a press release from Biopure
7 on October 30th, 2003, correct?

8 A. Yes.

9 Q. The first paragraph reads "Biopure
10 Corporation today announced its plan to respond
11 by June 30th, 2004 to the Food & Drug
12 Administration questions regarding its biologics
13 license application for Hemopure. The company's
14 adjusted its operating plan to reduce expenses
15 and conserve cash while it completes its written
16 response to the FDA."

17 Did I fairly read that?

18 A. That's what it says here.

19 Q. Does that paragraph communicate
20 anything -- let me back up.

21 Is there any information in that
22 paragraph that you believe should have been
23 revealed earlier than October 30th, 2003?

24 A. If it's talking in regards to the 200

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1 Q. And Exhibit 40 titled Biopure
2 Presentation by Thomas Moore, CEO of ThinkEquity
3 Partners, Growth Conference, San Francisco,
4 California at the Omni Hotel, Wednesday,
5 September 17th, 2003. Correct? That's the
6 document?

7 A. Yes.

8 Q. Do you recall anything about
9 ThinkEquity Partners Growth Conference?

10 A. No.

11 Q. And I take it you don't recall ever
12 seeing this document before?

13 A. No.

14 (Whereupon, Exhibit 41 was marked for
15 identification.)

16 BY MR. BLANCHARD:

17 Q. Do you have Exhibit 41 in front of
18 you?

19 A. Yes.

20 Q. Please take a moment and review it.
21 I'll ask you some questions about this. It's
22 only two pages.

23 (Witness reviewing document.)

24 A. Okay.

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1 or 220 questions that needed to be answered that
2 came up in July, yes, it should have been
3 brought up a lot sooner.

4 Q. I'm saying -- sorry, go ahead.

5 A. If that's what it's -- if those are
6 the questions they're talking about.

7 Q. Does it at all refer to those
8 questions you just mentioned?

9 MR. LONGMAN: Objection. It refers to
10 what it refers to.

11 MR. BLANCHARD: The objection is
12 noted.

13 A. What was that?

14 MR. BLANCHARD: You don't need to
15 testify for the witness.

16 BY MR. BLANCHARD:

17 Q. Do you need the question read back, or
18 do you want me to rephrase it?

19 A. I'm not sure what was said.

20 Q. Just lawyers objecting with each
21 other.

22 A. Okay.

23 Q. Does that first paragraph refer to
24 those questions from back in July that you were

Page 198

1 talking about?

2 A. I'm not sure. I'm saying if it does,
3 I said it's true what I said before as far as it
4 doesn't -- it's not referring -- it should have
5 been, the 220 questions, it should have been
6 referred to back in July when it was presented
7 rather than October like you're saying.

8 Q. Is there anything else that should be
9 included here?

10 A. Well, I think they should have -- I
11 mean through all this dialogue they should have
12 mentioned about the trials being put on hold,
13 and there's been nothing about that as far as
14 any in this, there hasn't been in anything else.
15 So I mean it's kind of like they're saying
16 what -- but it seems to be like avoiding it.

17 Q. Is there anything contained -- well,
18 actually, you didn't sell any stock until at
19 least January 16th of 2004, correct?

20 A. If that's what it is, yes.

21 Q. I mean you didn't sell any Biopure
22 stock until January of 2004, correct?

23 A. Whatever my records show.

24 Q. Now, do you recall hearing anything

Page 200

1 again?

2 (Whereupon, the reporter read back the
3 pending question.)

4 MR. LONGMAN: My objection was he
5 didn't recall reading it, so now you're asking
6 him if he recalled it at this time. I mean it's
7 a non-sequitur.

8 BY MR. BLANCHARD:

9 Q. Viewing this press release today, do
10 you view anything about this press release to be
11 negative concerning Biopure?

12 A. Well, I'd say there's questions in
13 regards to the FDA, that's a negative there that
14 they weren't approved already, and I'd say that
15 there's questions in the application. So in
16 essence that's a negative in itself. But as I
17 read it now --

18 BY MR. BLANCHARD:

19 Q. I'm sorry, are you done?

20 There's questions regarding FDA that's
21 a negative, is that what you said?

22 A. I'm saying there's questions that have
23 to be answered regarding the FDA application,
24 I'm saying if they haven't been, here it is

Page 199

1 about this press release at the time it was
2 issued?

3 MR. LONGMAN: Didn't you ask that
4 question before?

5 MR. BLANCHARD: Not just like that.

6 MR. LONGMAN: You said was he familiar
7 with it, and he said --

8 MR. BLANCHARD: I'm not going to argue
9 about it.

10 MR. LONGMAN: He said he wasn't
11 familiar. Didn't you say -- go ahead, answer
12 the question. I think he said he wasn't
13 familiar with it.

14 MR. BLANCHARD: Counsel's testimony is
15 noted.

16 MR. LONGMAN: You can't ask a question
17 and assume that the question was answered based
18 on --

19 MR. HUANG: He said he might not have
20 read it, and this is a different question.

21 MR. TUCCILLO: And he said he didn't
22 recall.

23 A. I don't recall.

24 MR. BLANCHARD: What was the question

Page 201

1 October, and if they haven't answered them
2 already, then isn't that a negative?

3 Q. Okay.

4 MR. LONGMAN: I'm going to object to
5 those questions.

6 BY MR. BLANCHARD:

7 Q. In your view, is there anything else
8 negative about this press release or the
9 information contained in the press release?

10 MR. LONGMAN: Do you understand the
11 question?

12 A. Is there anything else in here that's
13 negative about the press release.

14 MR. LONGMAN: When you say "negative,"
15 what do you mean?

16 MR. BLANCHARD: Not positive, not
17 good, not good news, bad news.

18 BY MR. BLANCHARD:

19 Q. Is there anything here that's bad news
20 for a Biopure investor?

21 MR. LONGMAN: As he sits here reading
22 it today?

23 MR. BLANCHARD: As he sits here
24 reading it today.

51 (Pages 198 to 201)

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1 A. Knowing what I know, yes, this is all
2 negative because it doesn't have all the facts.

3 BY MR. BLANCHARD:

4 Q. For what's stated, not what you think
5 is or should be stated here, but what's stated
6 in the press release, is there anything that's
7 bad news for the Biopure investor?

8 A. Yes, because it's leaving out
9 information.

10 Q. Other than leaving out information, is
11 there anything that's bad news in this press
12 release for a Biopure investor?

13 A. No.
14 (Whereupon, Exhibit 42 was marked for
15 identification.)

16 BY MR. BLANCHARD:

17 Q. Do you have Exhibit 42 in front of
18 you?

19 A. Yes.

20 Q. And Exhibit 42 appears to be a
21 transcript from October 30th, 2003, is that
22 correct?

23 A. Appears to be.

24 Q. Do you recall listening in to any

Page 204

1 a complete response letter responding to the
2 company's BLA to market Hemopure in the United
3 States for the treatment of acutely anemic adult
4 patients undergoing orthopedic surgery and for
5 the elimination or reduction of red blood cell
6 transfusions in these patients."

7 Did I read that correctly?

8 A. Yes.

9 Q. Is there anything in that sentence
10 that you view as bad news for the Biopure
11 investor?

12 A. I'll have to read it over again.
13 (Witness reviewing document.)

14 A. All you read is that first sentence,
15 and it really doesn't -- it just says that they
16 sent a response for that, that's all it's
17 stating.

18 BY MR. BLANCHARD:

19 Q. The question is; is there anything
20 about that that you view as bad news for the
21 Biopure investor?

22 MR. TUCCILLO: That single sentence?

23 MR. BLANCHARD: Yes.

24 A. You're saying the first sentence

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1 conference call of Biopure on or around October
2 30th, 2003?

3 A. I might have.

4 Q. But you don't have any specific
5 recollection that you did or not?

6 A. No.
7 (Whereupon, Exhibit 43 was marked for
8 identification.)

9 BY MR. BLANCHARD:

10 Q. Do you have Exhibit 43 in front of
11 you?

12 A. Yes.

13 Q. It's Biopure -- it's entitled Biopure
14 Announces 2003 Fourth Quarter and Year End
15 Financial Results." Correct?

16 A. Yes.

17 Q. Did you read this? Have you ever read
18 this before today?

19 A. Honestly I can't recollect right at
20 the moment.

21 Q. If you could turn to page two of the
22 document. At the bottom of that page it says
23 "other developments," and the first sentence
24 reads "on July 30th, 2003, the FDA sent Biopure

Page 205

1 there?

2 BY MR. BLANCHARD:

3 Q. Yes.

4 A. It's not positive or negative. I mean
5 it's just a sentence. It doesn't even state
6 anything -- a fact other than going ahead and
7 saying that they reviewed.

8 Q. So I take it the answer is no?

9 A. No. I mean if you want to read down
10 further, I don't know as far as what else it
11 says there.

12 MR. LONGMAN: Why don't you read the
13 whole paragraph.

14 BY MR. BLANCHARD:

15 Q. Actually no, I don't at this point --

16 MR. LONGMAN: You'd rather take the
17 statements out of context? Okay.

18 MR. BLANCHARD: Counsel's sarcasm is
19 noted. I'll get back to it.

20 MR. LONGMAN: Go ahead.

21 A. Okay. I'd like to read the rest of --

22 BY MR. BLANCHARD:

23 Q. Wait. If I could just finish my line
24 of questioning.

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1 A. Okay. Well, then, I retract my answer
2 then, because I say that that's an unfair
3 question on something that it's like reading a
4 portion out of there in that sense, and you're
5 asking a question that a sentence doesn't have
6 any validity.

7 MR. LONGMAN: Okay. Just -- he'll ask
8 questions, you answer them.

9 A. Go ahead.

10 BY MR. BLANCHARD:

11 Q. Is there anything in that first
12 sentence that wasn't disclosed to the market
13 before?

14 MR. LONGMAN: As of the date of this?

15 MR. BLANCHARD: Yes, as of December
16 11th.

17 (Witness reviewing document.)

18 MR. LONGMAN: Do you understand the
19 question?

20 A. It does not, it does not say what the
21 complete response is or was.

22 BY MR. BLANCHARD:

23 Q. I'm sorry. My question; is there any
24 information contained in that first statement

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1 that appears, you know, here for the first time
2 -- let me retract that and I'll re-ask it.

3 Is there anything, any information
4 contained in that first sentence of the
5 paragraph under "other developments" that in
6 your mind had not been disclosed previously,
7 previous to this press release, Exhibit Number
8 43?

9 A. It doesn't give you the outcome, it
10 doesn't give you what the statement was, so to
11 me it's negative because it doesn't go any
12 further in telling you what the response was
13 from the FDA. It's telling you get a response
14 from the FDA, but it does not say what the
15 response was.

16 Q. I think I'm not making my question
17 clear. I'm sorry, it is getting late in the
18 day.

19 I'm not asking you what's missing
20 here. I'm asking you if there's something here
21 printed on the page that the market never heard
22 of before.

23 MR. LONGMAN: If you know.

24 A. No.

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1 MR. LONGMAN: No, you don't know, or
2 no, the market never heard it before, just to be
3 clear?

4 THE WITNESS: No, I don't know.

5 MR. BLANCHARD: I need to take just
6 like five minutes to confer with counsel, and I
7 can wrap up probably within five minutes.

8 MR. LONGMAN: Okay.

9 (Whereupon, a recess was taken from
10 7:36 p.m. to 7:45 p.m.)

11 MR. BLANCHARD: Back on the record.
12 I have nothing further.

13 BY MS. LUSTER:

14 Q. Good evening, Mr. Erickson, my name is
15 Jodi Luster, and I represent Ronald Richards in
16 this matter.

17 I know it's late, and I'm going to be
18 brief. I will remind you that you are still
19 under oath, so I just ask that to the best of
20 your ability you answer my questions accurately,
21 truthfully and thoroughly, and I don't have
22 many.

23 During the class period between April
24 9th, 2003 and December 24th, 2003, do you recall

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1 reviewing any financial information or
2 statements of Biopure?

3 MR. TUCCILLO: I'm sorry, can you read
4 that back?

5 MS. LUSTER: I can repeat it.

6 BY MS. LUSTER:

7 Q. During the class period between April
8 9th, 2003 and December 24th of 2003, do you
9 recall reading any of Biopure's financial
10 information or statements?

11 MR. TUCCILLO: Thanks.

12 A. I saw the statements and so forth,
13 yes.

14 BY MS. LUSTER:

15 Q. Could you be a little bit more
16 specific what you recall reviewing?

17 A. The statement -- well, it's more so
18 any of the statements at that -- I guess I'd be
19 very vague if I went ahead and said anything to
20 it, but I didn't see anything that -- there was
21 nothing in there mentioning as far as going
22 ahead with the clinical stuff being on hold, or
23 the end of July with the questions in that sense
24 on the FDA.

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1 But as far as more so the financial
2 stuff, as far as going ahead and saying what --
3 how they were getting money coming into the
4 company, and then that they had taken losses,
5 but they ended up going ahead, and with those
6 they improved over the previous year.

7 Q. Okay. And do you recall, and I don't
8 mean to be repetitive, I just want to be
9 specific, when I say financial statement or
10 financial information, balance sheets, you know,
11 numbers, revenue forecasts, etcetera, do you
12 recall reviewing any of that?

13 A. Not completely, just some of the
14 information in here that we had today as far as,
15 you know, quarterly review or something like
16 that.

17 Q. And --

18 MR. LONGMAN: He pointed to the
19 documents.

20 BY MS. LUSTER:

21 Q. I was just going to clarify, to the
22 exhibits.

23 And as a follow-up, do you recall
24 reviewing any public filings filed by Biopure

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1 testimony was yes, that you did recollect this
2 document, that you were familiar with it? This
3 was before counsel had read you a portion of it.

4 MR. LONGMAN: I'm not sure about that.

5 A. I'm not sure if I said I don't
6 recollect or whatever something like this. But
7 anything in this kind of format, writing, it's
8 very new to me as far as anything else I've
9 seen. It's either in bigger print or something
10 like that.

11 BY MS. LUSTER:

12 Q. So before today, had you -- do you
13 recognize this document, or have you read --
14 remember reading this document before today?

15 A. I'm not positive on that, sorry.

16 Q. Okay. That's fine.

17 Throughout your testimony today you've
18 testified to information, statements made by
19 Biopure that you believe to be false and
20 misleading, is that correct?

21 A. Yes.

22 Q. And that information and statements
23 concerned what, generally?

24 A. It concerns not letting the public

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1 with the SEC?

2 A. Nothing other than in the documents
3 that were in our action.

4 Q. And I'm sorry, what do you mean by
5 documents in your action?

6 A. Sorry, long day.

7 Q. That's okay.

8 A. No, as far as going ahead and seeing
9 what the filings were for that, no, I hadn't,
10 other than what I've got from my attorneys and
11 reviewed.

12 Q. And I would like to just go back, and
13 I don't have a copy in front of me, it's Exhibit
14 27, it's the S-3.

15 And you have Exhibit 27 in front of
16 you?

17 A. Yes.

18 Q. Okay. I'm certainly not going to ask
19 you to read it.

20 A. Thank you.

21 Q. But do you recall earlier you were
22 questioned by counsel whether or not you had
23 recognized this document, which is the Biopure
24 April 11th, 2003 S-3, and I believe your

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1 know as far as the clinical trials being put on
2 hold in April by the FDA, and also the 200, 220
3 questions that needed to be answered that came
4 out in July as far as -- I mean that's quite a
5 few to go ahead and get an approval and so
6 forth, and through that whole period of time I
7 felt that we were being misled, myself and
8 anybody that was purchasing the stock or had
9 purchased it at that point in time without that
10 information.

11 Q. And none of those alleged false or
12 misleading statements that you're talking about
13 related to, pertained or concerned any of the
14 financial information or statements of Biopure,
15 is that correct?

16 A. I don't know. Would you repeat that
17 question?

18 Q. Sure.

19 The information and statements that
20 you just testified about as what you believe was
21 false and misleading, allegedly misstated as
22 false and misleading, doesn't relate to any
23 financial statements of Biopure?

24 A. Well --

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1 MR. LONGMAN: Wait a minute. I want
2 to object to the question as being vague and
3 ambiguous.
4 MS. LUSTER: Okay.
5 MR. TUCCILLO: He said he never read
6 this.
7 MS. LUSTER: I'm going to object that
8 he did, and it's on the record that he did
9 review --
10 MR. LONGMAN: He didn't refer to
11 specific statements. You keep referring to
12 statements.
13 BY MS. LUSTER:
14 Q. Financial information, I'm sorry if
15 that's not clear.
16 MR. LONGMAN: Would you do me a favor,
17 ask the question one more time?
18 MS. LUSTER: Absolutely.
19 BY MS. LUSTER:
20 Q. I'd asked you before about today
21 through your testimony what information you
22 thought was false and misleading or inaccurate,
23 is that correct?
24 A. Yes.

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1 Q. And you just testified what -- or
2 summarized what you thought was inaccurate or
3 misleading, what the information referred to?
4 A. Right.
5 Q. And my question to you was; none of
6 the information that you allegedly believe is
7 inaccurate or false or misleading relates to
8 Biopure's, the company's, financial information?
9 A. Well --
10 Q. Is that correct?
11 A. Yes, it does.
12 Q. And how does it relate to the
13 financial information?
14 A. It relates as to going ahead and
15 having somebody purchase stock as far as without
16 that information it looks like everything's fine
17 and the company's going forward, whereas -- so
18 in essence that's going to affect the financial
19 factors of the company as far as people
20 purchasing the stock and everything and the
21 stock going up.
22 If the facts came up at the point in
23 time that they were, that would possibly go
24 ahead and diminish the amount of buyers that

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1 would be there, which would in turn affect the
2 amount of stock that's being sold and the dollar
3 amount that it's being sold for. So the
4 financial statements would have been affected.
5 Q. Were you finishing, or that was the
6 end?
7 A. It would have been affected
8 negatively.
9 Q. Okay.
10 A. Other than what they were showing.
11 Q. The financial statements that you
12 testified before that you had reviewed during
13 the class period, the actual numbers --
14 A. If you're reviewing financial
15 statements with the information that the public
16 knows at that point in time and it looks like
17 it's all positive, no matter what the financial
18 statements show, it shows a better picture than
19 if it had the negative functions that were not
20 told to the public.
21 Q. So are you testifying today that
22 Biopure's financial information was inaccurate?
23 A. I'm saying that --
24 MR. LONGMAN: Objection.

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1 A. -- would have been affected by if the
2 actual truth came out of the withholding stuff.
3 The financial statements could be correct as to
4 what they showed at that point in time, but I'm
5 saying as far as with the information, it's not
6 divulged out there, keep the financial
7 statements the same. If it was divulged out
8 there, I'm saying that would have been more so
9 not enhancing the financial statements, it would
10 have diminished them.
11 BY MS. LUSTER:
12 Q. I'll ask one more time just because
13 I'm trying to understand, not to confuse you,
14 and just so I understand today.
15 Are you testifying that you believe
16 that the financial statements and information,
17 if I'm not clear, like balance sheets, etcetera,
18 information that's released in the exhibits that
19 you've seen was inaccurate at the time that it
20 was issued?
21 A. I don't know.
22 MR. LONGMAN: Objection.
23 MS. LUSTER: I'm sorry, was that an
24 objection?

55 (Pages 214 to 217)

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1 MR. LONGMAN: Objection. You're
2 asking the same question.

3 A. I don't know if they were or not. But
4 what I'm saying is it does what I testified
5 earlier on would influence those financial
6 statements in a negative way.

7 BY MS. LUSTER:

8 Q. Okay. And I just have a few more
9 questions.

10 Can you go back to Exhibit 25, please,
11 which is the second consolidated amended
12 complaint?

13 I believe you testified before, and I
14 don't want to put words in your mouth, that you
15 have reviewed this complaint?

16 A. Yes.

17 Q. Do you recall anything in this
18 complaint stating that Biopure's financial
19 statements or information is inaccurate?

20 A. No.

21 MS. LUSTER: Thank you. That's all I
22 have. Thank you very much.

23 THE WITNESS: Okay.

24 MR. TUCCILLO: Could you read the last

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1 we responded fully and completely to any
2 document requests that sought information
3 relative to this lawsuit, relevant to this
4 lawsuit or is likely to lead to admissible
5 evidence in this lawsuit, and we informed you
6 that we did not intend to produce him again
7 after today. This was your opportunity.

8 MR. BLANCHARD: Right. We have that
9 agreement to disagree.

10 MR. LONGMAN: Okay.

11 MR. BLANCHARD: Done? Thank you very
12 much.

13 (Whereupon, the deposition was
14 concluded at 8:01 p.m.)
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24

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1 answer?

2 (Whereupon, the reporter read back the
3 above question and answer.)

4 MR. TUCCILLO: Is there anyone else?

5 MR. HUANG: No questions.

6 MR. BLANCHARD: We're going to take
7 two minutes.

8 (Whereupon, a recess was taken from
9 7:57 p.m. to 8:00 p.m.)

10 MR. LONGMAN: We have no further
11 questions. We have no questions at all of the
12 witness.

13 And he's appeared, and we don't intend
14 to produce him again.

15 MR. BLANCHARD: Okay. The only thing
16 I'd say --

17 MR. LONGMAN: I want that to be clear.

18 MR. BLANCHARD: The only thing I'd say
19 is on the record I believe we expressed that we
20 believe the deposition will be suspended in the
21 event we get further documents in response to
22 our document request, because there are
23 outstanding issues about those documents.

24 MR. LONGMAN: Okay. We believe that

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1 ERRATA SHEET DISTRIBUTION INFORMATION
2 DEPONENT'S ERRATA & SIGNATURE INSTRUCTIONS
3

4 ERRATA SHEET DISTRIBUTION INFORMATION

5 The original of the Errata Sheet has
6 been delivered to Matthew L. Tuccillo, Esquire.

7 When the Errata Sheet has been
8 completed by the deponent and signed, a copy
9 thereof should be delivered to each party of
10 record and the ORIGINAL forwarded to Michael D.
11 Blanchard, Esquire, to whom the original
12 deposition transcript was delivered.

13 INSTRUCTIONS TO DEPONENT

14 After reading this volume of your
15 deposition, please indicate any corrections or
16 changes to your testimony and the reasons
17 therefor on the Errata Sheet supplied to you and
18 sign it. DO NOT make marks or notations on the
19 transcript volume itself. Add additional sheets
20 if necessary. Please refer to the above
21 instructions for Errata Sheet distribution
22 information.
23
24

05/30/2006

Ronald W. Erickson

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1 ATTACH TO DEPOSITION OF RONALD W. ERICKSON

2 CASE: Biopure Corporation Securities

3 DATE TAKEN: 5-30-06

4 ERRATA SHEET

5 Please refer to page 221 for errata sheet

6 instructions and distribution instructions.

7 PAGE LINE CHANGE REASON

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 I have read the foregoing transcript
 16 of my deposition and except for any corrections
 17 or changes noted above, I hereby subscribe to
 18 the transcript as an accurate record of the
 19 statements made by me.

20
 21 Executed this ____ day of _____, 2006.

22
 23 _____
 24 RONALD W. ERICKSON

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3

4 I, MAUREEN O'CONNOR POLLARD, RPR, CLR,
 5 and Notary Public in and for the Commonwealth of
 6 Massachusetts, do certify that on the 30th day
 7 of May, 2006, at 1:09 o'clock, the person
 8 above-named was duly sworn to testify to the
 9 truth of their knowledge, and examined, and such
 10 examination reduced to typewriting under my
 11 direction, and is a true record of the testimony
 12 given by the witness. I further certify that I
 13 am neither attorney, related or employed by any
 14 of the parties to this action, and that I am not
 15 a relative or employee of any attorney employed
 16 by the parties hereto, or financially interested
 17 in the action.

18 In witness whereof, I have hereunto
 19 set my hand this 31st day of May, 2006.

20

21

22 REGISTERED PROFESSIONAL REPORTER

23

24

57 (Pages 222 to 223)